

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Professional Organization

Organizations **Just The Beginning Foundation**

Recommenders

Williams, Zuberi
zuberi.williams@mdcourts.gov
Andrews, Rawle
RAndrews@aarp.org

References

The Honorable Zuberi B. Williams
District Court of Maryland, District IV
191 East Jefferson Street
Rockville, MD 20850
(301) 563-8867
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Rawle Andrews, Jr., Esq.
Attorney at Law
Regional Vice President
AARP Foundation
601 E St. NW
Washington, DC 20049
(202) 434-2047
RAndrews@aarp.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Janki J. Kaswala

11306 Glenn Dale Ridge Rd | Glenn Dale, MD 20769

jjkaswala@gmail.com | 301-266-8020

April 5, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, Virginia 23219

Dear Judge Hanes:

I am thrilled to apply for the 2022-2024 clerkship position. I am currently a judicial law clerk in Maryland where I work on both civil and criminal dockets. I was encouraged to apply for this position by the **Honorable Zuberi Williams**, a former law clerk to the **Honorable Gerald B. Lee**. I would be an exceptional fit as a law clerk in Your Honor's chambers for three reasons.

First, I will bring my strong work ethic and diverse perspective to chambers as a first-generation attorney with a passion for the judiciary. My interest in clerking stems from my personal experience appearing before a federal judge as a teenager. My parents, who are refugees from India, were detained by immigration authorities and at risk of deportation. The District Court of the Virgin Islands invited me to testify on my family's behalf and ultimately allowed us to reunite in my home state of Maryland. The court's balanced and thoughtful decision granted me both a future with my family and the future in law I have today. I discovered firsthand that justice delayed can certainly be justice denied, which is why I want to clerk for the "Rocket Docket." As a result of my journey, I will bring to chambers a willingness to overcome challenges, a commitment to meaningful service to the Court, and a core focus on always increasing the caliber of my work.

Second, I have prior experience in matters regularly heard before magistrate judges. As a judicial intern to the **Honorable Deborah Robinson** at the United States District Court for the District of Columbia, I researched and drafted Reports and Recommendations on actions arising from the Freedom of Information Act, Social Security Act, and in detention hearings. For example, I analyzed whether Social Security claimants should receive disability awards, whether criminal defendants should be detained or released on bonds, and whether parties should win a case on summary judgment. My foundational knowledge will allow me to add immediate value to the law clerk role and to quickly master new concepts and legal developments.

Finally, as a judicial law clerk, I further honed the practical skills necessary to serve chambers, such as legal writing and research, and excellent communication and case management. I support thirteen district judges in drafting opinions and memoranda on a wide range of civil matters. To date, I have written 215 bench memoranda. In addition, I assist the court with managing pandemic-related measures, including monitoring and analyzing frequent changes in procedure and legislation. The pandemic challenged me to be efficient and extremely organized through responsibilities such as processing a 14,000-case backlog. As a result, I have learned to work methodically and confidently under pressure, and to anticipate the needs of the court. I am prepared to bring the best of my combined abilities to the law clerk position with Your Honor.

I welcome the opportunity to discuss my qualifications further with you. Thank you for your time and consideration of my application.

Respectfully,
/s/ Janki J. Kaswala

Janki J. Kaswala

11306 Glenn Dale Ridge Road | Glenn Dale, MD 20769

jkkaswala@gmail.com | 301-266-8020

EDUCATION

J.D., American University Washington College of Law

Received May 2020

GPA/Distinctions: 3.54 *Cum Laude*, CALI Award for Torts

Washington, DC

Activities/Leadership: *President*, South Asian Law Student Association; *Senior Editor*, Legislation and Policy Brief; *Senator*, Student Government Association.

B.A. in History, University of Maryland, College Park

Received May 2015

EXPERIENCE

District Court of Maryland, District VI, Montgomery County

August 2020 to Present

Judicial Law Clerk

Rockville, MD

Prepare legal memoranda and written orders for the thirteen presiding judges. Manage civil motions docket, including analyzing parties' arguments, researching and interpreting applicable law, and drafting recommendations.

Rising For Justice

January 2020 – April 2020

Student Attorney for the Housing Litigation Advocacy Clinic

Washington, DC

Represented tenants before the Landlord & Tenant Branch of the D.C. Superior Court. Developed and executed case strategies. Appeared in court proceedings and prepared petitions, motions, discovery, and stipulations.

United States District Court for the District of Columbia

January 2020 – April 2020

Judicial Intern to the Honorable Deborah A. Robinson

Washington, DC

Researched and reviewed federal statutes and case law. Drafted written recommendations and reports for cases taken under advisement, including matters related to federal crimes, Social Security, and the Freedom of Information Act.

District Court of Maryland, District VI, Montgomery County

June 2019 – July 2019

Judicial Intern to the Honorable Zuberi B. Williams

Rockville, MD

Reviewed and assessed civil matters for sufficiency of evidence and recommended entry or denial of judgement. Drafted written opinions for cases taken under advisement. Researched and reviewed statutes and case law.

Office of the Attorney General of Maryland, Criminal Division

January 2019 – May 2019

Law Clerk to the Organized Crime Unit

Baltimore, MD

Researched and drafted memoranda pertaining to firearms violations, fraudulent loan schemes, and the Maryland gang statute. Aided in trial preparation by conducting fact investigation, compiling discovery, and organizing evidence.

Office of Majority Leader Steny H. Hoyer

May 2018 – December 2018

Congressional Intern

Washington, DC

Researched and drafted memoranda on foreign policy. Attended policy briefings in lieu of staff and assisted in the coordination of congressional events. Addressed constituent concerns.

Law Office of Hammad S. Matin, P.A.

May 2018 – August 2018

Summer Law Clerk

La Plata, MD

Researched and drafted memoranda for criminal defense. Participated in client meetings. Attended court proceedings.

Office of Maryland State Senator Nathaniel J. McFadden

January 2015 – April 2016

Legislative Aide (January-April 2016); *Intern* (January-April 2015)

Annapolis, MD

Researched and drafted legislative memoranda on matters before the Budget & Taxation and Judicial Proceedings committees. Drafted and developed weekly constituent newsletter. Fulfilled constituent requests for services.

ADDITIONAL SKILLS & INFORMATION

Languages and Interests: Gujarati (fluent), Hindi (conversational); hiking, live music, and international travel.

KASWALA JANKI J 4462937 07/24

08/23/20

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AMERICAN UNIVERSITY
WASHINGTON, DCAMERICAN UNIVERSITY
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WASHINGTON, DC

FALL 2018

30 CREDIT HOURS ADVANCED STANDING

NOVA SOUTHEASTERN UNIVERSITY

FALL 2018

LAW-508	CRIMINAL PROCEDURE I	03.00	A-	11.10
LAW-601	ADMINISTRATIVE LAW	03.00	A	12.00
LAW-795F	PREVENTION OF GENOCIDE	02.00	B+	06.60
LAW-795MD	SOCIAL MEDIA & THE LAW	02.00	A-	07.40
LAW-795Q	HUMAN RIGHTS AND ENVIRONMENT	02.00	B+	06.60
LAW-821A	LEGISLATION	02.00	B+	06.60
LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 50.30QP 3.59GPA				

SPRING 2019

LAW-550	LEGAL ETHICS	02.00	B+	06.60
LAW-633	EVIDENCE	04.00	B+	13.20
LAW-700C	CONTEMPRY TOPICS IN ADMIN LAW	02.00	A	08.00
LAW-769	SUPERVISED EXTERNSHIP SEMINAR	02.00	A	08.00
LAW-899	SUPERVISED EXTERNSHP FIELDWORK	04.00	P	00.00
LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 35.80QP 3.58GPA				

FALL 2019

LAW-621	CONFLICT OF LAWS	03.00	B	09.00
LAW-635	NATIONAL SECURITY LAW	02.00	B+	06.60
LAW-694	CRIMINAL TRIAL ADVOCACY	03.00	B+	09.90
LAW-813	COMPARATIVE ENVIRONMENTAL LAW	03.00	A-	11.10
LAW-984A	CHALLENG & OBGNS OF PROSECUTOR	02.00	A	08.00
LAW-992	CRIMINAL JUSTICE ETHICS	03.00	A-	11.10
LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 55.70QP 3.48GPA				

SPRING 2020

LAW-655	IMMIGRATION & NATURALIZATION	03.00	P	00.00
LAW-751	CLINIC FIELDWORK			
	D.C. LAW STUDENTS IN CRT FIELD	04.00	P	00.00
LAW-757	DC LAW STUDENTS IN CRT SEM	02.00	P	00.00
LAW-795AV	ADVANCED LEGAL ANALYSIS	03.00	P	00.00
LAW SEM SUM: 12.00HRS ATT 12.00HRS ERND 0.00QP 0.00GPA				
DEGREE AWARDED:				
JURIS DOCTOR				
DEGREE DATE:				
05/17/20				
HONORS:				
CUM LAUDE				
JD CUM SUM: 56.00HRS ATT 56.00HRS ERND 141.80QP 3.54GPA				

END OF TRANSCRIPT

AMERICAN UNIVERSITY
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WASHINGTON, DCAMERICAN UNIVERSITY
WASHINGTON, DC



DISTRICT COURT OF MARYLAND

District Number Six

ZUBERI BAKARI WILLIAMS

Associate Judge

191 E. Jefferson St.
Rockville, MD 20850
301-563-8867
1-800-735-2258 TTY

July 9, 2020

To Whom It May Concern:

I am a current Judge in Maryland and I am writing this letter in strong support of **Janki Kaswala's** law clerk application to your chambers. Ms. Kaswala has the discipline and integrity to undertake this tremendous opportunity. Specifically, I am confident that she would make a meaningful contribution to your chambers because she is a persuasive and thorough advocate with an innovative mindset.

First, Ms. Kaswala is a diligent worker that can do the heavy lifting that a federal clerkship demands. Ms. Kaswala served as my American Bar Association Judicial Internship Opportunities summer intern. She conducted meticulous research regarding every issue to which I assigned her, and was able to analyze difficult statutory provisions, cases, and concepts. Her writing is clear, concise, and reflects her technical acumen. I was so impressed that I hired her to be my law clerk for the 2020 – 2021 term.

Second, Ms. Kaswala is results-oriented. Ms. Kaswala sought my guidance following her internship towards developing a career trajectory that improves her legal skills while remaining true to serving the needs of her community. Additionally, Ms. Kaswala is a team player who contributes at a high level, and yet remains agile enough to adapt to changing situations.

Third, Ms. Kaswala has a pragmatic approach to the law and understands that court decisions have a real and lasting effect on people's lives based on her own experiences. I know she will go above and beyond in her pursuit of justice and equality within the legal system.

I make this recommendation without reservations. If you have any questions, please feel free to contact me directly.

I remain,

Unfashionably grateful,

/s/ Zuberi Bakari Williams

Honorable Zuberi Bakari Williams

March 30, 2021



RE: Letter of Recommendation
Clerkship Applicant: Ms. Janki Kaswala

Dear Judge:

At a time when public confidence in the legal profession is waning, and the merits of diversity and inclusion are being debated aloud across the public sector, numerous board rooms and various multi-media platforms, I am pleased to submit this unqualified letter in support of Ms. Janki Kaswala's candidacy for a clerkship in your chambers. I first met Janki as a student in my *Advanced Litigation & Trial Practice* course at Georgetown University Paralegal Studies Program (or "Georgetown-PSP") during the summer 2015. She was enrolled in this summer intensive program to earn a paralegal certificate as a predicate to a future career in law and policy. Janki and I have communicated about her career path and the building blocks of this journey during and since the 2015 summer term at Georgetown-PSP, including throughout her first year of legal studies as a merit scholar at the Shepard Broad Law Center of Nova Southeastern University.

Despite the heavy demands of the Georgetown summer intensive program, Janki emerged as one of my strongest students. She is a thorough researcher, a persuasive oral advocate and a very strong writer even when analyzing extremely difficult statutory provisions, cases, and concepts. She also was enthusiastic about learning and trying to apply these new concepts and techniques. I believe this comes from her background as a small business CEO, as well her work as a Senior Fellow to a Ranking Member of Congress, a Legislative Assistant to a Maryland State Senator and a Summer Associate at a criminal defense firm. Beyond technical acumen, I also was impressed by Janki's advanced level of diplomacy. She was very strategic and judicious about how she participated in my class. For example, during certain class periods, Janki seemed to seize just the right moment to raise her hand to provide comments or insights that frequently took class discussions in different, more focused directions (i.e., she has a knack for right tracking the issues). This caused several of the class discussions to end in a better place than we started.

Perhaps sensing this, and apparently not wanting to appear overbearing, I also noticed that in certain instances Janki hesitated to raise her hand at the beginning of some class periods until others had the opportunity to speak, or she whispered the answer to a classmate who might otherwise been penalized for unpreparedness. I believe this conduct speaks volumes to her character, diligence and sense of purpose. I was most pleased to learn, for example, that Janki earned a CALI award in Torts during her 1L year in South Florida. I believe she will continue to bring these strong values and attributes of integrity, discipline and helpfulness to the judicial environment and ultimately the legal profession.

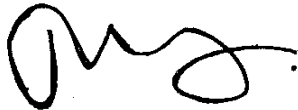
As a professional woman of South Asian descent, I also know that Janki fully appreciates, celebrates and promotes of the values of diversity and inclusion as an asset and not a crutch. Janki certainly will fight for everything to which she is legitimately due, however, I have never observed a sense of entitlement in my interactions with her. This is a rare character trait in days and times inside and outside the legal profession where "looking out for number one increasingly seems to have no boundaries".

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In sum, Janki is one of my most memorable students in over a decade of work in higher education and someone I am proud to help mentor. She is extremely bright, enthusiastic and results-oriented, i.e., a smart person with integrity who cares. She also is a team player who will contribute at a high level, and yet remain agile enough to adapt to changing situations even when her view is in the minority. It is for these among other reasons, that I submit this unqualified letter in support of Ms. Janki Kaswala's application to your chambers. Thank you.

Please feel free to contact me if you have any additional questions. I can be reached at 202.434.2047; or RAndrews@aarp.org.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rawle Andrews Jr.', with a stylized flourish at the end.

Rawle Andrews Jr., Esq.
Regional Vice President

To: [REDACTED]
From: Janki Kaswala
Date: March 19, 2021
Re: [REDACTED] Memorandum

QUESTIONS PRESENTED

1. Whether the corporate veil may be pierced in order to hold members of Defendant-LLC individually liable for breach of contract.
2. Whether Defendant-LLC, a foreign corporation unregistered in Maryland, may maintain a counterclaim.

SHORT ANSWER

It is not likely that Defendant-LLC's corporate veil may be pierced in the absence of fraud to hold Defendant-LLC's individual members liable for a breach of contract. The corporate veil may be pierced when it is necessary to enforce a paramount equity, such as when a corporation acts as the "alter ego" of its individual members to evade legal obligations. However, Maryland courts have held that where a paramount equity is found, a showing of fraud is still necessary to pierce the veil. While there is substantial evidence that a paramount equity has occurred in this case, Plaintiff did not allege fraud nor is there evidence of fraud on the record.

In addition, Defendant-LLC may maintain its counterclaim.

BRIEF FACTUAL HISTORY

This is a breach of contract action between Plaintiff, a landscaping company, and its client, Defendant-LLC as well as Defendant-LLC's shareholders. On February 19, 2018, Plaintiff and Defendant-LLC entered into a series of contracts for landscaping services on a residential property owned by the individual Defendants. Your Honor should note that, following the filing of this suit, the individual Defendants transferred title to the residential property in fee

simple absolute to Defendant-LLC without consideration. Plaintiff completed two of three landscaping contracts and received payment from Defendant-LLC accordingly. However, on May 30, 2020, Plaintiff brought suit against Defendant-LLC and Defendant LLC's individual members, [REDACTED] and [REDACTED], for Defendant's failure to compensate Plaintiff for services completed under the third and final contract for the construction of a playground. In response, Defendant-LLC filed a counterclaim alleging that Plaintiff materially breached the contract when Plaintiff failed to adhere to certain landscaping requirements (i.e., using the wrong materials and failing to properly survey the property), thereby causing Defendant-LLC to rescind from the contract. Defendant-LLC further alleges Plaintiff caused significant damage to Defendant-LLC's residential property where the services were performed. Your Honor has scheduled a pre-trial conference on March 3, 2021 to address the personal liability of individual Defendants [REDACTED] and [REDACTED] in this breach of contract.

DISCUSSION

1. Individual Liability

The issue is whether the Court may pierce the corporate veil to hold the individual members of [REDACTED], LLC personally liable for damages in a breach of contract action. Shareholders are not ordinarily held individually liable for the debts or obligations of a corporation except where it is necessary to prevent fraud or enforce a paramount equity. The courts may set aside the corporate entity for paramount equities and "deal with substance rather than form as though the corporation did not exist, in order to prevent the evasion of legal obligations." *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 562 (2013). The courts may

apply the “alter ego” doctrine to enforce a paramount equity where the plaintiff can show: (1) complete domination, not only of the finances, but of policy and business practice in respect to the transaction so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control was used by the defendant to commit fraud or wrong, to perpetrate the violation of the statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff’s legal rights; and (3) that such control and breach of duty proximately caused the injury or unjust loss. *Hildreth v. Tidewater Equip. Co.*, 378 Md. 724, 733 (2003). For purposes of applying the alter ego doctrine, some commonly considered factors are: (1) whether the corporation is inadequately capitalized, fails to observe corporate formalities, fails to issue stock or pay dividends, or operates without a profit; (2) whether there is commingling of corporate and personal assets; (3) whether there are non-functioning officers or directors; (4) whether the corporation is insolvent at the time of the transaction; and (5) the absence of corporate records. *Id.*

Maryland law is particularly restrictive regarding attempts to pierce the corporate veil. The article governing corporations states that: “Except as otherwise provided by this title, no member shall be personally liable for the obligations of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company.” MD. CODE ANN., MD. CORPS. & ASSN’NS § 4A-301 (West 2021). In addition, the Court of Special Appeals recently held that “a corporate veil will not be pierced to redress the breach of a contractual obligation in the absence of fraud.” *Serio*, 209 Md. App. 545, 559 (2013). This standard has been so narrowly construed that neither the Court of Special Appeals nor the Court of Appeals has ultimately “found an equitable interest more important than the state’s interest in limited shareholder liability.” *Serio* at 484 (quoting *Bart Aconti & Sons, Inc. v. Ames-*

Ennis, Inc., 340 A.2d 225, 234 (Md. 1975); *Residential Warranty v. Bancroft Homes Greenspring Valley, Inc.*, 728 A.2d 783, 789 n. 13 (Md. Ct. Spec. App. 1999)). Here, Defendant-LLC served as the “alter ego” of individual Defendants: the LLC was undercapitalized and doing business as an unregistered foreign corporation. However, the record does not show that Defendant-LLC or the individual Defendants misled or otherwise fraudulently evaded its legal obligations to Plaintiff. Thus, the Court should not hold the individual members personally liable in this breach of contract action.

a. Undercapitalization

Plaintiff alleges that Defendant-LLC was controlled and used by Defendants, [REDACTED] and [REDACTED], to avoid liability under a contract for landscaping services between the parties. Plaintiff refers to two “suspicious” events to advance its argument that Defendant-LLC was operated as a means to unjustly enrich the individual Defendants: the timing of Defendant’s LLC creation and the undercapitalization of Defendant-LLC as evidenced by the transfer of Defendant LLC’s assets to the individual Defendants. First, Defendant-LLC was formed only months before the parties entered into the contract. Second, Defendant-LLC’s remaining obligation under the third contract was to pay approximately \$30,000.00 to Plaintiff. Defendant-LLC’s only available asset at this time was the residential property where the individual Defendants currently reside. In addition, title to this property was transferred to the individual Defendants at no cost immediately following Plaintiff’s filing of the complaint. Based on these events, Plaintiff alleges that the individual Defendants created Defendant-LLC with the sole and intentional purpose of avoiding payment for Plaintiff’s services when the time for payment came due. Plaintiff also alleges that the transfer of Defendant-LLC’s assets to the individual

Defendants would prevent Plaintiff from obtaining a monetary judgment of value from Defendant-LLC.

In *Serio v. Baystate Properties*, the Court of Special Appeals determined that piercing the corporate veil was not warranted when the plaintiff, a construction contractor, sought to hold an LLC's sole member personally liable under a contract to build homes. In *Serio*, the parties entered into a contract to build houses on two lots owned by the sole member individually. *Serio*, 209 Md. App. 545, 547 (2013). After the homes were built, the LLC became insolvent and was unable to compensate the contractor for its services. *Id.* The LLC was not adequately capitalized as it possessed "no assets and very little cash," but the sole member both owned and sold the lots in his individual capacity following the LLC's insolvency. *Id.* at 489. The circuit court determined that the sole member's ownership of the lots was misleading to the plaintiff and thus constituted a paramount equity that warranted the piercing of the LLC's corporate veil. *Id.* The Court of Special Appeals disagreed and reversed, finding that although the LLC was undercapitalized and the lots were owned in an individual capacity, the sole member had made clear that the LLC was the plaintiff's contractual partner. *Id.* The relevant contractual documents were signed by the sole member as a representative of the LLC and stated unambiguously that the signatories were not to be held liable for any obligations of their respective limited liability companies. *Id.*

Here, the individual Defendants are similar to the sole member in *Serio*. The individual Defendants made clear to Plaintiff that Defendant-LLC was Plaintiff's contractual partner. The individual Defendants signed all three contracts as the "Authorized Representatives" of Defendant-LLC. In the first contract, the individual Defendants struck their own names, hand-

wrote Defendant-LLC's name as party to the contract, and Plaintiff did not object or challenge the change. In fact, Plaintiff incorporated the changes into the remaining two contracts before presenting them to the individual Defendants for signatures. Furthermore, Plaintiff's claim that Defendant-LLC was undercapitalized lacks merit. Plaintiff received several payments from Defendant-LLC in the form of business checks and cashier's checks, which could reasonably indicate to Plaintiff and to this Court that the residential property was not Defendant-LLC's only available asset. In *Serio*, the LLC had only \$100.00 in cash value. Here, Defendant-LLC paid approximately \$60,000.00 to Plaintiff for two contracts before any dispute as to the third contract arose between the parties. Similar to the sole member in *Serio*, Defendant-LLC's payments were made through an account belonging to Defendant-LLC. Despite Plaintiff's claims, the transfer of real estate to individual Defendants is not "suspicious" as Defendant-LLC was able to compensate Plaintiff previously and may continue to do so.

b. Failure to Register A Foreign Corporation

Plaintiff contends that the individual Defendants' failure to register Defendant-LLC, a foreign corporation, and knowingly conduct business suggests that the individual Defendants intentionally sought to deprive Plaintiff of its rights under the contract. The failure to register a foreign corporation is a paramount equity under Maryland law but does not warrant the piercing of Defendant-LLC's corporate veil. In the case of *Hildreth v. Tidewater Equip. Co.*, the court found that a paramount equity had occurred in a breach of contract action where an individual defendant operated a limited liability company as his alter ego. The court relied on several factors for its determination. First, the defendant was the sole shareholder and "personally involved" in the transactions at issue. Additionally, there was evidence of bad faith in the

defendant's dealings with the plaintiff. *Hildreth*. 378 Md. 724, 733–35 (2003). For instance, the defendant knowingly failed to register the corporation in Maryland and conducted business with the plaintiff against Maryland law. *Id.* The court found the defendant's use of the corporation and failure to register in Maryland was to evade responsibility and constituted a paramount equity. Due to Maryland's restrictiveness on individual liability, however, the court elected not to pierce the corporate veil without evidence of fraud. *Id.*

Here, the actions of the individual Defendants are similar to the defendant in *Hildreth*. Defendants are the sole owners of Defendant-LLC and personally involved in the transactions as apparent in the communications provided by the parties. As the defendant in *Hildreth* knowingly failed to register his limited liability company in Maryland, the individual Defendants failed to register Defendant-LLC. Defendant-LLC was an unregistered foreign corporation when it entered into the contract with Plaintiff and remains unregistered. This manner of conduct was deemed by the Court of Special Appeals to be a paramount equity. Similarly, this Court may also determine that the individual Defendants conducted their activities in bad faith and with a conscious evasion of responsibility when they knowingly did business against Maryland law. While the actions of Defendant-LLC and its individual members are substantially similar to the parties in *Hildreth*, the failure to register did not amount to fraud in *Hildreth*. As such, the Court should not pierce the corporate veil without a showing of fraud despite evidence of a paramount equity.

2. Defendant-LLC's Crossclaim as an Unregistered Foreign Corporation

Under § 7-301 of the Corporations and Associations Article, an unregistered foreign corporation ordinarily may not maintain a suit in any Maryland court. Nevertheless, the Court of

Special Appeals has held that the statutory bar does not preclude unregistered foreign corporations from asserting counterclaims arising out of subject matter of plaintiff's suit. *Finch v. Hughes Aircraft Co.*, 57 Md.App. 190, 246 (1984). Defendant-LLC is an unregistered foreign corporation from Florida. Defendant's counterclaim will not be barred as Defendant's counterclaims allege a material breach by Plaintiff in the same contract as in Plaintiff's suit.

CONCLUSION

The Court should not pierce Defendant-LLC's corporate veil. Although Defendant-LLC may be acting as an "alter ego" of the individual Defendants, thus raising concern a paramount equity has occurred, there is no showing of fraud. The Court of Special Appeals has ruled that, in order to preserve the corporate status, a showing of fraud is a necessary element to piercing the corporate veil in cases of paramount equity. Plaintiff neither alleges fraud nor does the evidence on the record provide the Court with reasonable belief that a fraudulent act has occurred. As such, the individual Defendants may not be held personally liable for the debts and obligations of Defendant-LLC.

Applicant Details

First Name **Mariam**
 Last Name **Kayani**
 Citizenship Status **U. S. Citizen**
 Email Address kayani.mariam94@gmail.com
 Address

Address

Street
11870 Grand Park Ave
City
North Bethesda
State/Territory
Maryland
Zip
20852
Country
United States

Contact Phone Number **240-552-3832**

Applicant Education

BA/BS From **State University of New York-
Fashion Institute of Technology**
 Date of BA/BS **May 2017**
 JD/LLB From **Other**
<http://www.lawschool.edu>
 Date of JD/LLB **December 6, 2020**
 LLM From **Georgetown University Law Center**
 Date of LLM **February 1, 2022**
 Class Rank **Not yet ranked**
 Does the law school have a
Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Universitty of Melbourne Law School
Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience**References**

1. William T. O'Brien
Partner- Head of Complex Cross-Border Litigation & International
Commercial Arbitration
Eversheds Sutherland LLP
Washington, D.C.
williamobrien@eversheds-sutherland.com
+1 (202)-220-8236

2. Colin Ray
Supervisory Attorney-Adviser
U.S. Securities and Exchange Commission
Washington, D.C.
rayco@sec.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Mariam Kayani
11870 Grand Park Ave
North Bethesda, MD 20852

April 20, 2022

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219

Dear Justice Hanes,

I am writing to apply for a 2022-2023 clerkship with your chambers. Along with passing the New York Bar Exam and awaiting admission into the First Department, I have a LL.M in International Business and Economic Law from Georgetown University Law Center and a J.D. from the University of Melbourne Law School. After I have completed my clerkship with Justice Elizabeth W. Hanes on the United States District Court for the Eastern District of Virginia, I plan on working at a law firm specializing in federal litigation matters.

My enthusiasm for working on federal claims stems from my extensive litigation experience and understanding the importance of resolving disputes justly. More precisely, I have had the opportunity to assist on regulatory litigation at the U.S. Securities and Exchange Commission concerning Foreign Broker Dealers and their compliance under Rule 15a-6. Within the Division of Examinations, I monitored Broker-Dealer Compliance with net capital and risk assessment rules and reporting requirements. Additionally, my experience as a Summer Associate at Marque Lawyers introduced me to the Australian Securities and Investments Commission, where I counseled investors in litigating against corporate board of directors' fiduciary breaches. I was exposed to a variety of challenges and opportunities related to the fundamentals of legal strategies. Moreover, I reviewed contracts and assisted the litigation of a major Sydney railroad dispute and identified legal discrepancies regarding liquidated damages. Additionally, I aided the corporate governance group with the inspecting investment firms' contracts and amendments to ensure conformity with Australian Security law. The breadth of my work experience reflects a commitment to tackling issues through litigation as well as honing the skills that will make me an effective advocate and judicial clerk.

In addition to my work experience, my past experiences have equipped me with the ability to be inquisitive, create ideas, and seek inspiration from a range of sources. Apart from my legal experience, I participated and won the 2019 KWM #breakinglaw Hackathon, which initially was a new territory for me, but by collaborating with an interdisciplinary team, I delivered concrete results. We leveraged team members' design ideas and expertise to develop a video game App to transform compliance training into an interactive and informative activity. We were humbled to have won the Peoples' Choice Award for this App.

Enclosed please find my resume, a writing sample, and my transcripts. At your convenience, I would be delighted to expand on my qualifications and answer any questions to support my candidacy.

Respectfully,



Mariam Kayani

MARIAM KAYANI

11870 Grand Park Ave, North Bethesda, Maryland 20852

kayani.mariam94@gmail.com | (240) 551-3832

Bar Admission: NY Bar (Passed, admission pending)

EDUCATION

Georgetown University Law Center

International Business & Economic Law LL.M- 3.70/4.0

Focus Areas: International Commercial Arbitration with a Foreign Sovereign, International Law, Negotiations and Mediation, International Contracts & Sales Law, Financial Restructuring and Bankruptcy

Activities: Institute of International Economic Law Fellow, Graduate Research Assistant

Washington D.C., USA

January 2021-February 2022

University of Melbourne Law School

Juris Doctor- Second Class Honors

Focus Areas: International Disputes and Resolutions, Law and Technology, Intellectual Property

Activities: Global Law Students Association Director, King Wood Mallesons 2019 Hackathon Winner

Melbourne, AUS

February 2018-December 2020

Fashion Institute of Technology

Bachelor of Science- Magna Cum Laude

Focus Areas: International Trade, Minor in Economics

Activities: Merchandising Society Social Chair, Phi Theta Kappa Honor Society, Club Field Hockey

New York City, USA

August 2013-May 2017

WORK EXPERIENCE

The U.S. Securities and Exchange Commission

Legal Extern (Division of Examinations)

- Analyzed three broker-dealers' compliance with SEC Rule 15a-6.

- Played a vital role in multiple Anti-Money Laundering examinations; preparing questions and clarifying SEC and FINA Rules to entities.

Washington D.C., USA

August 2021-December 2021

International Monetary Fund

Legal Extern (Ombudsman and Mediation Office)

- Advised IMF employees to resolve employment-related disputes through the internal dispute resolution system.

Washington D.C., USA

June 2021-August 2021

Georgetown University Law Center

Graduate Research Assistant

- Conducted legal and non-legal research and writing on topics such as human trafficking, child labor, forced labor, wildlife crime, counterterrorism, and election law.

Washington D.C., USA

January 2021 – June 2021

Lawyers Without Borders

Public Interest Intern

- Produced substantive manuals for legal advocates, attended briefings, and tracked legislation.

Washington D.C., USA

January 2020-February 2020

Marque Lawyers

Summer Associate (Litigation and Corporate Restructuring)

- Constructed liquidated damages arguments in the Sydney Metro Line dispute for litigation.

- Recognized implications in a corporation's indenture to effectively provide advice on its restructuring.

- Inspected business contracts and amendments to ensure conformity with ASIC and the Corporations Act 2001.

Sydney, AUS

November 2019-December 2019

United Nations Global Compact

International Participant Relations Intern

- Engaged the Keurig CEO for the 2017 Leader's Summit Conference.

New York City, USA

March 2017-September 2017

New York U. S. Export Assistance Center, U.S. Department of Commerce

International Trade Assistant

- Researched viable markets overseas through screening procurement leads and disseminating information to American firms. Findings published in the District Export Council Magazine of New York City.

New York City, USA

September 2016-December 2016

LANGUAGES

- English (Fluent), Urdu (Native), Hindi (Basic)

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Mariam Kayani
GUID: 831887542

Course Level: Master of Laws

Entering Program:

Georgetown University Law Center
LLM- Int'l Bus & Econ Law
Major: Int'l Business & Economic Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2021 -----							
LAWG	1036	08	International Contracts and Sales Law	2.00	A-	7.34	
Franz Werro							
LAWG	121	11	Corporations	3.00	A	12.00	
Karl Egbert							
LAWG	1482	09	Negotiations and Mediation Seminar	3.00	B+	9.99	
Eric Berger							
LAWG	235	08	International Law I: Introduction to International Law	3.00	A	12.00	
Jessica Simonoff							
LAWG	3033	09	International Commercial Arbitration with a Foreign Sovereign	2.00	A-	7.34	
Allen Green							
				EHrs	QHrs	QPts	GPA
Current				13.00	13.00	48.67	3.74
Annual				13.00	13.00	48.67	3.74
Cumulative				13.00	13.00	48.67	3.74
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Summer 2021 -----							
LAWG	002	14	Foundations of American Law	2.00	P	0.00	
Michael Cedrone							
LAWG	909	10	LL.M. Externship Seminar	2.00	P	0.00	
Molly Jackson							
				EHrs	QHrs	QPts	GPA
Current				4.00	0.00	0.00	0.00
Cumulative				17.00	13.00	48.67	3.74
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2021 -----							
LAWG	2026	08	Professional Responsibility Law in the United States	2.00	P	0.00	
LAWG	3030	10	Introduction to U.S. Civil Procedure	3.00	A	12.00	
LAWG	545	08	Financial Restructuring and Bankruptcy	4.00	B+	13.32	
LAWG	844	17	U.S. Legal Research Analysis and Writing	2.00	H	0.00	
Scott Astrada							
----- Transcript Totals -----							
				EHrs	QHrs	QPts	GPA
Current				11.00	7.00	25.32	3.62
Annual				15.00	7.00	25.32	3.62
Cumulative				28.00	20.00	73.99	3.70
----- End of Master of Laws Record -----							

Student Number: 805537

22 December 2020

Miss Mariam Kayani



ACADEMIC TRANSCRIPT

Completion and Conferral Summary:

Juris Doctor

Completed 11 Dec 2020. Conferred 22 Dec 2020.

Study Abroad Undergraduate

Year	Code	Title	Points	Mark	Grade
2016	ANCW10001	Ancient Egypt and Mesopotamia	12.50	069	H3
	CWRI20005	Creative Non Fiction	12.50	072	H2B
	UNIB10002	Logic: Language and Information	12.50	055	P

Weighted Average Mark for this course 65.333

Juris Doctor

Year	Code	Title	Points	Mark	Grade
2018	LAWS50023	Legal Method and Reasoning	12.50	***	CMP
	LAWS50024	Principles of Public Law	12.50	064	P
	LAWS50025	Torts	12.50	051	P
	LAWS50026	Obligations	12.50	070	H2B
	LAWS50028	Constitutional Law	12.50	056	P
	LAWS50029	Contracts	12.50	073	H2B
	LAWS50031	Legal Theory	12.50	071	H2B
	LAWS90140	Disputes and Ethics	12.50	075	H2A
2019	LAWS50128	Intellectual Property & Popular Culture	12.50	068	H3
	LAWS50030	Property	12.50	070	H2B
	LAWS50032	Administrative Law	12.50	062	P
	LAWS50037	Evidence and Proof	12.50	063	P
	LAWS50033	Equity and Trusts	12.50	062	P
	LAWS50034	Criminal Law and Procedure	12.50	070	H2B
	LAWS50035	Corporations Law	12.50	075	H2A
	LAWS90075	Patents and Trade Secrets	12.50	063	P
2020	LAWS50059	Legal Internship	12.50	072	H2B
	LAWS50036	Remedies	12.50	077	H2A
	LAWS50094	International Commercial Law & Disputes	12.50	070	H2B
	LAWS90074	Copyright and Designs	12.50	080	H1
	LAWS50039	Legal Research	12.50	088	H1
	LAWS90033	Law Apps	12.50	081	H1
	LAWS90036	Legal Drafting	12.50	073	H2B
	LAWS50075	Trade Mark Law	12.50	073	H2B

Weighted Average Mark for this course 69.870

End Of Page



Continued on next page...

Student Number: 805537

22 December 2020

Miss Mariam Kayani

Page 2



End Of Transcript

Joanne Ligouris

Executive Director, Student and Scholarly Services and Academic Registrar



Privileged and confidential

Prepared for: Senior Partner
Copy to: N/A
Prepared by: Mariam Kayani
DATE: XX/XX/XX
RE: Brady, File No. XXX

You have asked me to submit a memorandum that highlights whether our client, the Brady's can be charged with educational neglect and whether they have any defenses. To answer this question, this memo will summarize the facts of the matter and discuss the relevant statutory and judicial authority.

QUESTION PRESENTED

Under § 3204 of the New York Education Law, can Mr. and Mrs. Brady be charged with educational neglect for violating the requirements of competent instructors and instruction substantially equivalent to that of public schools?

BRIEF ANSWER

In accordance with the discussion below, Mr. and Mrs. Brady can be charged with educational neglect for deviating from the requirements of § 3204 of the New York Education Law. Based on precedent, they have neglected to provide competent instruction by permitting their older children and their in-housekeeper to teach the younger children. In addition, the Brady's will need to provide further information to substantiate that they delivered substantially equivalent instruction to that of the public schools.

As a defense, the Brady's can dispute the charges on the basis that the procedure employed by the School District was inconsistent with § 100.10 of the New York Administrative Code. Therefore, by not placing the Brady's home instruction plan on a probation, the finding and charges by the School District may likely be invalid.

*Privileged and confidential***STATEMENT OF FACTS**

Mr. and Mrs. Brady are the parents of six children, ages six to 16 and have recently moved to New York (NY) from Wisconsin (WI), due to Mr. Brady's job as an architectural consultant. Since his work requires the family to move every couple of years, they have chosen to home school their children for the past 10 years. Intending to comply with NY laws, Mrs. Brady inquired about statutes relating to compulsory education and home-schooling. She submitted all the required paperwork to the school district superintendent where they resided. This included a notification of her intent to home school and an individualized home instruction plan (IHIP) for each child, including a listing of the curriculum in each of the required subjects. She listed herself as the sole instructor on the children's IHIP and the school district notified the family that the IHIP complied with the district requirements.

The Brady's, like many home-school families, operate a family business. The business has grown over the years, requiring Mrs. Brady to spend a few hours each day sewing and doing book-keeping. During this time, their live-in housekeeper Alice Ignatowski, who recently emigrated from Poland and is fluent in Polish, teaches the children conversational Polish. Every so often, Mrs. Brady also has the older children, Greg, Marsha, and Jan, instruct the younger children, Peter, Bobby, and Cindy. The younger children need instruction only with reading and math, but occasionally the older children will demonstrate a science experiment.

The current issue stems from the fact that their neighbor Gladys, who is a retired schoolteacher, observed that the older children were teaching math to the younger children. When Gladys asked if that was the regular practice, Mrs. Brady responded, "Once the older ones have mastered their math, reading or science skills, they spend time teaching the younger children." Gladys became

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concerned that Mrs. Brady was not teaching the younger children herself but having the older children and the housekeeper teach them and she called the superintendent's office to report what she had observed. She then went on to report the Brady family to the Office of Children and Family Services (OCFS). The OCFS contends that having the older children teach the younger children is not "substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor[s] reside."¹ However, the Brady's contend that the instruction given is substantially equivalent to that of the public schools because Mrs. Brady picks out the curriculum and knows what the older students are teaching for the day, even if she does not personally supervise.

DISCUSSION

I. THE BRADY'S ALLOWING THEIR CHILDREN TO TEACH ONE ANOTHER VIOLATED NEW YORK'S EDUCATION LAW BY DEVIATING FROM THE DISTRICT APPROVED INDIVIDUALIZED HOME INSTRUCTION PLAN.

Section 3204 of the NY Education Law asserts that a minor is required to attend instruction whether it be in a public school or elsewhere. In addition, such instruction may only be given by a competent teacher and should be taught in English. These statutory requirements apply to minors irrespective of their place of instruction. If instruction is provided elsewhere than a public school, then it must be "substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides."²

Principally, the Brady's have a recognized right to educate their children in a privately operated system such as home instruction than in public schools.³ However, they must meet the well settled

¹ New York Educ. Law §§ 3204(1), (2) (2006).

² New York Educ. Law § 3204(2) (2006).

³ In re Falk, 441 N.Y.S.2d 785, 790 (N.Y. Fam. Ct. 1981).

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NY Law which requires children between the ages of six and 16 to meet the minimum educational requirements.⁴ The present conduct exhibited by the Brady's does violate the statutory regime. By permitting the older children to teach the younger children, Mr. and Mrs. Brady have failed to give competent instruction for their children. Furthermore, the Brady's may have not provided substantially equivalent education. The following will provide a detailed explanation.

A. By Allowing Their Children to Teach One Another, The Brady's Appear to Have Failed to Provide Competent Instruction for Their Children.

A "competent" teacher is not defined in the statute. However, from case law it can be ascertained that parents do not have to be certified as a teacher by the education commissioner to qualify as one within the meaning of § 3204(2), when providing instruction outside a public school.⁵ Therefore, the contentious issue is whether the older children would be considered 'competent' to provide instruction to the younger children.

Considering, the primary authority of law is silent on the definition of 'competent', it would be beneficial to pursue other resources such as the dictionary. The Cambridge Dictionary defines competent as, "having the skills or knowledge to do something well enough to meet a basic standard."⁶ In light of this, the older children certainly had the knowledge to teach the younger children because they provided instruction once they had mastered a certain subject. Nevertheless, it would be resourceful to examine case law.

In 1977, in the *Matter of Franz*, Mrs. Franz appealed the decision of the Family Court Judge, who held that her children had been neglected under the provisions of the Family Court Act.⁷ The

⁴ New York Educ. Law § 3205(1)(a) (2006).

⁵ In re Franz, 390 N.Y.S.2d 940, 942-943 (N.Y. App. Div. 2d Dep't 1977).

⁶ <https://dictionary.cambridge.org/us/dictionary/english/competent>.

⁷ In re Franz, 390 N.Y.S.2d 940, 942-943 (N.Y. App. Div. 2d Dep't 1977).

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appeals court held that Mrs. Franz was not successful in bearing the burden to teach her children at home, which she had elected to do. The court went onto question what impact Mrs. Franz's lack of extensive formal education would have on the older child's desire to become a psychiatrist. Such facts can be equated to the Brady's matter because although Mrs. Brady picks out the curriculum and knows what the older children are teaching for the day, she herself does not personally supervise instruction. In addition, Mrs. Brady took the burden of teaching all six children when she listed herself as the sole instructor on the IHIP. However, it should be noted that more facts will be needed regarding the duration the older children teach for. The reason is because if they provide instruction for an entire school day, then that may classify them as a teacher as opposed to a few hours, which possibly could designate them as tutors.

Nevertheless, it is recommended that the Brady's do not submit the argument that the term "competent" is unclear. This is because in 1988, the U.S. District Court held in *Blackwelder v. Safnauer*, that "competent" within the meaning of the NY Education Law governing the minimum standards of instruction was not lacking in meaning, and therefore was not invalid under the vagueness doctrine.⁸ Despite the fact that in this case, the reason for home instruction in lieu of public education was for religious reasons, the statute in question mandates that instruction be given by competent instructors. It should be acknowledged that the older children are simply not competent to teach the younger children because they have not been qualified in the judgment of the superintendent. The court further asserted that such law administering the minimum educational standards has been supplemented by extensive regulations in conjunction with the

⁸ Blackwelder v. Safnauer 1988/ US District Ct, N.D. NY

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detailed curriculum requirements of the local districts. Therefore, any ambiguity argument with respect to a competent instructor will potentially be rejected.

B. It Is Unclear That the Brady's Provided Their Children with A Substantially Equivalent Education.

An additional requirement expressed in the statute is that instruction given to minors elsewhere than public schools shall be at least substantially equivalent to that given to minors of like age and attainments at public school. Given that the statute does not provide factors that would qualify as 'substantially equivalent', precedent is essential. Based on the following discussion, it is unclear whether the Brady's have provided their children with substantially equivalent education. The primary reason for this determination is due to the lack of facts.

The onus is on Mr. and Mrs. Brady to demonstrate that their home instruction is substantially equivalent to instructions given to minors of like age and attainments at public school.⁹ *In re Falk*, the Court held that "substantially equivalent" means equal in worth or value, meeting essential and significant elements and correctly covering the subject matter for various subjects required to be taught in public, private, and home schools. This implies that the Brady's must prove that the instruction they are giving to their children is of the same value as they would have received in an established school. Considering this, it is doubtful that the instruction the older children are giving would result in similar or even better schooling since, there is an inherent indifference between a 16-year-old teaching and a mother who has been approved by the superintendent to teach. Yet, this may be refuted if the Brady's can offer proof to show that the older children understand the subject

⁹ *In re Falk*, 441 N.Y.S.2d 785, 790 (N.Y. Fam. Ct. 1981).

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matter which would be presented to the younger children and possess a professional approach in teaching.

Additionally, the Brady's need to prove that even though Mrs. Brady's business requires her to spend a few hours each day sewing and doing bookkeeping, her children are attending the same hours of instruction as they would in public schools. *In re Franz*, the appeal court maintained that only one and one-half hours per school day for at home-instruction was not a permissible replacement for public school education.¹⁰ This indicates that Mrs. Brady needs to demonstrate that she was setting aside at least five hours within the hours specified, similar to the public schools.¹¹ Even though Mrs. Brady teaches six pupils as opposed to 25, the five-hour requirement is not irrational. Without the number of hours, it is unclear whether the Mr. and Mrs. Brady are providing substantially equivalent education to their children.

Ultimately, the sole purpose of the compulsory education in NY is to ensure that children will get the appropriate education to help them find their place in society.¹² Given that the Brady's have not provided adequate instruction given by a parent who is competent and is not substantially equivalent, they presumably have not satisfied the statute. However, this is to be determined by the opinion of the local board of education or board of trustees as to whether the instruction given by the Brady's was equivalent to that offered in public schools.

¹⁰ *In re Franz*, 390 N.Y.S.2d 940, 942-943 (N.Y. App. Div. 2d Dep't 1977).

¹¹ N.Y. Educ. Law § 3210 (2) (McKinney).

¹² *People v. Turner*, 277 A.D. 317, 98 N.Y.S.2d 886 (App. Div. 1950).

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C. Giving Polish Lessons May Substantially Impact How The Court Will Rule

According to the Education Law, “English shall be the language of instruction” in the teaching of the subjects of instruction prescribed by law.¹³ An issue that the court may consider would be that their housekeeper Alice, gives Polish lessons and occasionally teaches the younger children when Mrs. Brady is working on her business. Providing polish lessons may be beneficial to obtain biliteracy which is not unlawful. However, if Alice teaches any of the required subjects in Polish, then that will violate the Education Law.

II. THE SCHOOL DISTRICT VIOLATED HOME SCHOOLING REGULATIONS BY FAILING TO PLACE THE BRADY’S ON PROBATION.

Based on the discussion above, the Brady’s must be placed on probation for violating the Education statute. Pursuant to § 100.10 (i) of the New York Administrative Code,¹⁴ since the Brady children are falling short of the home instruction assessment, the home instruction program should have been placed on probation for a period of up to two school years. Mr. and Mrs. Brady would then have needed to submit a remedial plan to address any deficiencies. If they intend to continue with home instruction, their children must attain 75% after one semester or 100% after two years. However, if the superintendent has reasonable grounds to believe that the program of home instruction is in substantial noncompliance, the superintendent may require home visits; with the purpose to ascertain areas of noncompliance with and to determine methods of remediating any such deficiencies. Instead of acting in compliance with § 100.10, the School District has prematurely charged the Brady’s with educational neglect.

¹³ New York Educ. Law § 3204(2)(i) (2006).

¹⁴ N.Y. Comp. Codes R. & Regs. tit. 8, § 100.10 (i).

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The Brady's circumstances can be distinguished from *In re Fatima*, where the mother failed to offer any evidence to show that her daughter was being home-schooled in accordance with the Board of Education requirements. The Appeals courts held that educational neglect was supported by a preponderance of the evidence.¹⁵ In contrast, Mrs. Brady has submitted evidence in the form of the proper paperwork to their School District Superintendent, which included a notification of her intent to home school and an individualized home instruction plan (IHIP) for each child, including a listing of the curriculum in each of the required subjects. By not conducting their procedure properly and placing the Brady's on probation, the School District appears to infringe on the Brady's right to due process under the 14th Amendment of the Constitution. Given that the objective of the regulation is to assist parents such as the Brady's in fulfilling their responsibilities under the Education Law, the failure to place them on a probationary period does the converse as it does not allow them an opportunity to improve their education plan.

CONCLUSION

In summary, a judge will likely determine that Mr. and Mrs. Brady have failed to provide education through a competent instructor and that education has not been substantially equivalent to the public schools around their residence. Despite that, the court might agree that the Brady's have not been properly charged under § 100.10 (i) of the New York Administrative Code since the school District did not properly follow the procedural steps of placing them on a probation. Therefore, it is probable that this defense could invalidate the charges of education neglect.

¹⁵ *In re Fatima A.*, 276 A.D.2d 791, 715 N.Y.S.2d 250 (2000)

Applicant Details

First Name **Kenneth**
 Middle Initial **G**
 Last Name **Kays**
 Citizenship Status **U. S. Citizen**
 Email Address gkays@wustl.edu

Address

Address
<p>Street 6648 Washington Avenue, Apt. C6</p> <p>City St. Louis</p> <p>State/Territory Missouri</p> <p>Zip 63130</p> <p>Country United States</p>

Contact Phone Number **6202494546**

Applicant Education

BA/BS From **Kansas State University**
 Date of BA/BS **May 2016**
 JD/LLB From **Washington University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014
 Date of JD/LLB **May 20, 2022**
 Class Rank **I am not ranked**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Drobak, John
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314-935-6487
Tuch, Andrew
andrew.tuch@wustl.edu
314-935-3189
Gardner, Trevor
trevorgardner@wustl.edu

References

Professor John N. Drobak
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Professor Trevor G. Gardner
trevorgardner@wustl.edu
(314) 935-3504

Professor Andrew Tuch
andrew.tuch@wustl.edu
(314) 935-3189

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

K. Garrett Kays
901 15th Street South, Apt. 514
Arlington, VA 22202
620-249-4546
gkays@wustl.edu

April 8, 2022

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for a clerkship in your chambers, either beginning in 2022 or for your next available position. I am currently a third-year law student at the Washington University School of Law, where I have taken a broad array of legal coursework and have developed my lawyering skills through a variety of legal internships.

Enclosed please find my résumé, transcript, and writing sample. The writing sample is my contributions to the argument section for a brief to the U.S. Court of International Trade as a summer law clerk for the U.S. Department of Commerce, Office of the Chief Counsel for Trade Enforcement and Compliance. The following individuals are submitting letters of recommendation separately and welcome inquiries in the meantime.

Professor John N. Drobak
Washington University
School of Law
drobak@wustl.edu
(314) 935-6487

Professor Trevor G. Gardner
Washington University
School of Law
trevorgardner@wustl.edu
(314) 935-3504

Professor Andrew Tuch
Washington University
School of Law
andrew.tuch@wustl.edu
(314) 935-3189

I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,



K. Garrett Kays

K. Garrett Kays

6648 Washington Avenue, Apt. C6 | St. Louis, MO 63130 | gkays@wustl.edu | 620-249-4546

EDUCATION

Washington University School of Law St. Louis, MO
J.D. Candidate May 2022

GPA: 3.37, Certificate in Business & Corporate Law (Expected)

Honors and Activities: International Law Society Member; Energy and Environmental Law Society Member; Scholar in Law Award Recipient; Gustavus A. Buder and Gustavus A. Buder, Jr. Scholarship Award Recipient

Kansas State University Manhattan, KS
B.S. in Agriculture, Major in Agricultural Economics May 2016

GPA: 3.92, *magna cum laude*

Honors and Activities: KSU Dean of Student Life Outstanding Graduating Senior Award; KSU Department of Agricultural Economics Outstanding Senior Award; KSU Student Governing Association Student Senator of the Year; KSU Blue Key Honor Society Member of the Year

International Study Programs: China Agricultural Economics Study Tour Participant; Taiwan International Agriculture Exchange Program Delegate

EXPERIENCE

Federal Trade Commission, Bureau of Competition Washington, D.C.
Legal Extern, Technology Enforcement Division January 2022 – May 2022

- Assist in enforcement investigation and litigation efforts by conducting legal and factual research, interviewing witnesses, writing legal memoranda, and preparing documents and exhibits

U.S. Attorney's Office for the Southern District of Illinois Fairview Heights, IL
Legal Extern, Civil Division August 2021 – December 2021

- Drafted motion to dismiss in response to Federal Tort Claim Act claim on management of pension benefits
- Conducted legal research on constitutional tort defenses and government's duties to federal prisoners
- Analyzed potential scope of damages in medical malpractice case

Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Dep't. of Commerce Washington, D.C.
Law Clerk May 2021 – August 2021

- Contributed to briefs regarding judicial review of administrative determinations of antidumping and countervailing duties of foreign exports that caused material injury to U.S. industry
- Conducted legal research on statutory deference to federal agencies in trade remedy reform

Office of the U.S. Trade Representative, Executive Office of the President Washington, D.C.
Special Assistant to the Chief Agricultural Negotiator October 2017 – August 2019

- Wrote speeches and congressional testimony for the Ambassador regarding the U.S.–Mexico–Canada Agreement (USMCA), trade enforcement action against China, and other Administration trade priorities
- Prepared briefing materials with trade data research for meetings involving industry partners, members of Congress, and foreign government officials regarding trade in food and agricultural goods

U.S. Senator Jerry Moran Washington, D.C. and Manhattan, KS
Legislative Correspondent January 2016 – October 2017

- Advanced legislative priorities in agriculture, energy, environment and trade with particular focus on the Senator's positions on Appropriations and Environment and Public Works Committees
- Drafted eight weekly memos regarding relevant policy issues to prepare Senator for meetings and corresponded through 75 weekly letters about the Senator's position on agriculture related issues

Policy Internships

- Cornerstone Government Affairs, *Policy Intern*, May 2020 – August 2020
- U.S. Senate Agriculture Committee, *Legislative Intern*, May 2015 – August 2015
- Office of the President, Kansas State University, *Legislative Assistant*, August 2013 – May 2015
- Land O'Lakes, Inc., *Government Relations Intern*, June 2014 – August 2014

INTERESTS & AFFILIATIONS

Enrolled Citizen of Cherokee Nation, Kansas 4-H Key Award Recipient, KS Ag Policy Fellowship Steering Committee

3/2/22, 4:59 PM

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Washington University Unofficial Transcript for: **Kenneth (Garrett) Kays**

Student ID Number: 483286

Student Record data as of: 3/2/2022 3:59:09 PM

HOLDS - no records of this type found

DEGREES AWARDED

JURIS DOCTOR

Anticipated

MAJOR PROGRAMS

-----Semester-----

Admitted	Terminated	Status	Code	Prime or Joint	Program
FL2019	SP2021	Closed	LW0150	Prime	JURIS DOCTORIS
SU2021		Open	LW0160	Prime	JURIS DOCTOR

ADVISORS - no records of this type found

SEMESTER COURSEWORK AND ACADEMIC ACTION

Note: Courses dropped with a status of 'D' will not appear on your transcript.

Courses dropped with a status of 'W' will appear on your transcript.

FL2019

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	500D	01	0.0	C		CIP				Legal Research Methodologies I
W74 LAW	500F	01	2.0	C		3.10				Legal Practice I: Objective Analysis and Reasoning (Lewis)
W74 LAW	501D	02	4.0	C		2.98				Contracts (DeGeest)
W74 LAW	515F	03	4.0	C		3.04				Torts (Norwood)
W74 LAW	520C	01	4.0	C		3.40				Constitutional Law I (Osgood)
Enrolled Units:			14.0	Semester GPA:			3.13	Cumulative Units:		14.0
										Cumulative GPA: 3.13

SP2020

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	500E	01	1.0	P		P				Legal Research Methodologies II
W74 LAW	500G	01	2.0	C		CR				Legal Practice II: Advocacy (Lewis)
W74 LAW	502T	04	4.0	C		CR				Criminal Law (Gardner)
W74 LAW	503E	02	1.0	P		CR				Negotiation (Shields)
W74 LAW	506D	01	4.0	C		CR				Civil Procedure (Drobak)
W74 LAW	507W	01	4.0	C		CR				Property (Sachs)
Enrolled Units:			16.0	Semester GPA:			0.00	Cumulative Units:		30.0
										Cumulative GPA: 3.13

MSN 0023 SPECIAL NOTE: During the spring of 2020, a global pandemic required significant changes to coursework. Unusual enrollment patterns and grades may reflect the tumult of the time. **Transcript: Yes Expires 12/31/2999**

FL2020

-----Grade-----											
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title	
W74 LAW	538A	01	3.0	C		3.04				Corporations (Tuch)	
W74 LAW	542M	01	3.0	C		3.40				Criminal Procedure: Investigation (Gardner)	
W74 LAW	612F	01	3.0	C		3.64				Arbitration Law Theory and Practice	
W74 LAW	645A	01	3.0	C		3.22				Bankruptcy (Keating)	
W74 LAW	805B	01	3.0	C		3.16				Introduction to European Union Law	
Enrolled Units:			15.0	Semester GPA:			3.29	Cumulative Units:		45.0	
				Cumulative GPA:							3.22

SP2021

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	530A	01	3.0	C		3.58				Administrative Law (Levin)
W74 LAW	569C	01	3.0	C		3.82				Securities Regulation (Seligman)
W74 LAW	578M	01	3.0	C		3.16				Comparative Business Negotiation (Reeves)
W74 LAW	611C	01	3.0	C		3.64				Antitrust (Drobak)
W74 LAW	691B	01	3.0	C		3.46				Natural Resources Law (Heisel)

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<https://acadinfo.wustl.edu/apps/InternalRecord/Default.aspx?PrintPage=y&studentID=483286>

Enrolled Units: 15.0 **Semester GPA:** 3.53 **Cumulative Units:** 60.0 **Cumulative GPA:** 3.32
MSN 8223 IN-PERSON STUDY

Transcript: No **Expires** 12/31/2999

FL2021

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	549G	01	4.0	C		3.58				Federal Income Taxation (Wiedenbeck)
W74 LAW	561D	01	2.0	C		3.58				Lawyer Ethics (Rosen)
W74 LAW	625C	01	2.0	C		3.64				International Business Transactions (Rosenzweig)
W74 LAW	692G	01	4.0	P		CR				Government Lawyering Externship
W76 LAW	838S	01	3.0	C		3.46				Advanced Securities Regulation Seminar (Tuch)
Enrolled Units:			15.0	Semester GPA:		3.56	Cumulative Units:		75.0	Cumulative GPA: 3.37

SP2022

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	566C	01	1.0	C		3.58				Private Equity Transactions (Wolfe)
W74 LAW	617	01	3.0	C						State and Local Government (Mandelker)
W74 LAW	787D	01	8.0	P						Congressional and Administrative Law Externship (Von Rohr)
Enrolled Units: 12.0				Semester GPA: 3.58		Cumulative Units: 76.0		Cumulative GPA: 3.37		
MSN 8224 REMOTE STUDY										
Transcript: No Expires 12/31/2999										

OTHER CREDITS - no records of this type found

GPA SUMMARY

----- Semester Units -----						----- Cumulative Units -----						Level	---- GPA ----		
Semester	Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Grade Pts.	Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Units	Sem.	Cum.	Level
FL2019	14.0	14.0	0.0	0.0	0.0	43.9	14.0	14.0	0.0	0.0	0.0	14.0	3.13	3.13	2
SP2020	0.0	14.0	2.0	2.0	0.0	43.9	14.0	28.0	2.0	2.0	0.0	30.0	0.00	3.13	3
FL2020	15.0	15.0	0.0	0.0	0.0	93.3	29.0	43.0	2.0	2.0	0.0	45.0	3.29	3.22	4
SP2021	15.0	15.0	0.0	0.0	0.0	146.2	44.0	58.0	2.0	2.0	0.0	60.0	3.53	3.32	5
FL2021	11.0	11.0	4.0	4.0	0.0	185.4	55.0	69.0	6.0	6.0	0.0	75.0	3.56	3.37	6
SP2022	1.0	1.0	0.0	0.0	0.0	189.0	56.0	70.0	6.0	6.0	0.0	76.0	3.58	3.37	6

ENROLLMENT STATUS

Semester	Start	End	Enrollment Status	Level	Units	Status Change Date
FL2019	8/26/2019	12/18/2019	Full-Time Student	1	14.0	
SP2020	1/13/2020	5/6/2020	Full-Time Student	2	16.0	
FL2020	8/24/2020	1/10/2021	Full-Time Student	4	15.0	
SP2021	1/19/2021	5/13/2021	Full-Time Student	4	15.0	
FL2021	8/30/2021	12/22/2021	Full-Time Student	5	15.0	
SP2022	1/18/2022	5/11/2022	Full-Time Student	6	12.0	

DEMOGRAPHICS

Birthdate: 1/25/1994	Race: 9 - Multi-Racial Minority	Semester of Entry:
Birth Place: Joplin		Entry Status:
Date of Death:		Anticipated Deg Dt: 0522
	Hispanic:	Std Expt Graduation:
Gender: M	American Indian: Y	Frozen Cohort:
Marital Status:	Asian:	
Veteran Code:	Black:	Faculty/Staff Child:
Locale:	Hawaiian Pacific:	Alumni Code:
U.S. Citizen: Y	White: Y	Prof. School1:
Country:	Not Reported:	Prof. School2:
Visa Type:		Area of Interest:
Nonresident Alien:		Area of Interest Code:

ADMINISTRATIVE CODES - no records of this type found

HIGH SCHOOL - no records of this type found

PREVIOUS SCHOOLS

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Name	State	Code	Type Code	Type	Degree	Degree Date	Discipline Code	GPA	GPA Type	Credit
Kansas State Univ	KS	006334		BS	AGRICULTUR	0516		385		

UNIVERSITY EMAIL ADDRESS: gkays@wustl.edu

FORWARDS TO: gkays@email.wustl.edu

Registrar's Office

Kansas State University

118 Anderson Hall

Manhattan, KS 66506

PHONE:(785) 532-6254 FAX:(785) 532-5599

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Academic Transcript Kansas State University



STUDENT NAME KENNETH GARRETT KAYS	ACADEMIC PROGRAM AG UNDERGRADUATE DEGREE UG UNDERGRADUATE DEGREE AS GRADUATE NON DEGREE	ACADEMIC PLAN XXX-XX-8015 AGRICULTURAL ECONOMICS-B MAJOR NATURAL RESC & ENV SCI-SECMJ MAJOR GRADUATE CREDIT MAJOR	DATE PREPARED 06/10/2016	PAGE 1 OF 2
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EXTERNAL DEGREES

ST MARYS-COLGAN HS
05/01/2012 HIGH SCHOOL DIPLOMA

TRANSFER CREDITS

FORT SCOTT COMMUNITY COLLEGE
ATTENDANCE DATES FROM: 06/01/11 TO: 07/01/11 3.00

PITTSBURG STATE UNIVERSITY
ATTENDANCE DATES FROM: 08/01/11 TO: 05/01/12 5.00

LABETTE COMMUNITY COLLEGE
ATTENDANCE DATES FROM: 06/01/11 TO: 07/01/11 3.00

HIGHLAND COMMUNITY COLLEGE
ATTENDANCE DATES FROM: 05/01/13 TO: 07/01/13 5.00

BEGINNING OF UNDERGRADUATE RECORD

FALL 2012

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGEC 121	HONORS/AGR ECON/AGRIBUS	3.00	3.00	A	12.000
ASI 102	PRINC ANIMAL SCIENCE	3.00	3.00	A	12.000
COMM 105	PUBLIC SPEAKING 1A	2.00	2.00	A	8.000
GENAG 000	AGRIC SCHOLARS PROGR	0.00	0.00	CR	0.000
MATH 205	GEN CALC & LINR ALG	3.00	3.00	A	12.000
AGEC 105	AGR ECON/AGRIBUS OR	1.00	1.00	A	4.000
AGEC 115	AG ECON DECISION TOOLS	2.00	2.00	A	8.000
TERM GPA : 4.000 TERM TOTALS : 14.00 14.00 56.000					
CUM GPA : 4.000 CUM TOTALS : 14.00 30.00 56.000					
SEMESTER HONORS					

SPRING 2013

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGEC 315	CONTEMP ISS GLOBAL FOOD/	3.00	3.00	A	12.000
AGEC 318	FOOD & AGRIBUS MGMT	3.00	3.00	A	12.000
ECON 110	PRIN/MACROECONOMICS	3.00	3.00	A	12.000
GENAG 200	TOPICS/AG	0.00	0.00	A	0.000
COURSE TOPIC(S): TOP/AG SELF-DEVELOPMENT					

* * CONTINUED ON NEXT COLUMN * *

*** * CONTINUED FROM PREVIOUS COLUMN * ***

SPRING 2013

GENAG 295	INTRO SCHOLARSH/DIS	1.00	1.00	A	4.000
LEAD 212	INTRO IDRSHIP CONCEPT	2.00	2.00	A	8.000
COMM 321	PUBLIC SPEAKING 2	3.00	3.00	A	12.000
TERM GPA : 4.000 TERM TOTALS : 15.00 15.00 60.000					
CUM GPA : 4.000 CUM TOTALS : 29.00 45.00 116.000					
SEMESTER HONORS					

FALL 2013

COURSE	TITLE	ATT	EARNED	GRD	POINTS
ACCTG 231	ACCTG FOR BUS OPS	3.00	3.00	A	12.000
AGEC 410	AGRICULTURAL POLICY	3.00	3.00	A	12.000
ASI 320	PRINCIPLE OF FEEDING	3.00	3.00	A	12.000
GENAG 395	RESEARCH TOPICS DEVELOPM	1.00	1.00	A	4.000
POLSC 321	KANS POL AND GOVT	3.00	3.00	A	12.000
TERM GPA : 4.000 TERM TOTALS : 13.00 13.00 52.000					
CUM GPA : 4.000 CUM TOTALS : 42.00 58.00 168.000					
SEMESTER HONORS					

SPRING 2014

COURSE	TITLE	ATT	EARNED	GRD	POINTS
ACCTG 241	ACCTG FOR INV & FIN	3.00	3.00	A	12.000
AGEC 220	GRAIN/LIVESTOCK MKTG	3.00	3.00	A	12.000
ASI 318	FUND OF NUTRITION	3.00	3.00	A	12.000
GENAG 000	AGRIC SCHOLARS PROGR	0.00	0.00	CR	0.000
GENAG 396	RES/PROPOSAL/METHODS	1.00	1.00	A	4.000
STAT 350	BUS ECON STAT 1	3.00	3.00	A	12.000
AGEC 460	INTERNATIONAL FOOD/BUS	3.00	3.00	A	12.000
TERM GPA : 4.000 TERM TOTALS : 16.00 16.00 64.000					
CUM GPA : 4.000 CUM TOTALS : 58.00 74.00 232.000					
SEMESTER HONORS					

* * CONTINUED ON NEXT PAGE * *

Academic Transcript

Kansas State University



STUDENT NAME
KENNETH GARRETT KAYS
BIRTH DATE
01/25/YYYY
ACADEMIC PROGRAM
AG UNDERGRADUATE DEGREE
UG UNDERGRADUATE DEGREE
AS GRADUATE NON DEGREE

STUDENT NUMBER
XXX-XX-8015
ACADEMIC PLAN
AGRICULTURAL ECONOMICS-B MAJOR
NATURAL RESC & ENV SCI-SECMJ MAJOR
GRADUATE CREDIT MAJOR

DATE PREPARED
06/10/2016
ACADEMIC SUBPLAN
SPECIALTY OPTION
PAGE
2 OF 2

* * CONTINUED FROM PREVIOUS PAGE * *
FALL 2014

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGEC 500	PRODUCTION ECONOMICS	3.00	3.00	A	12.000
AGEC 525	NAT RES & ENVIR ECON	3.00	3.00	A	12.000
ECON 510	INTERMED MACROECON	3.00	3.00	A	12.000
GENAG 000	AGRIC SCHOLARS PROGR		0.00	CR	0.000
HIST 252	HIST US SINCE 1877	3.00	3.00	A	12.000
PSYCH 110	GENERAL PSYCHOLOGY	3.00	0.00	B	0.000
REPEATED : ORIGINALLY REPEATED COURSE					
TERM GPA : 4.000	TERM TOTALS :	12.00	12.00		48.000
CUM GPA : 4.000	CUM TOTALS :	70.00	86.00		280.000
SEMESTER HONORS					

SPRING 2015

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGCOM 400	AG BUS COMMUNICATION	3.00	3.00	A	12.000
AGEC 513	AGRICULTURAL FINANCE	3.00	3.00	B	9.000
ASI 515	BEEF SCIENCE	3.00	3.00	A	12.000
FDSCT 302	INTRO FOOD SCIENCE	3.00	0.00	B	0.000
REPEATED : ORIGINALLY REPEATED COURSE					
GEOL 100	EARTH IN ACTION	3.00	3.00	A	12.000
TERM GPA : 3.750	TERM TOTALS :	12.00	12.00		45.000
CUM GPA : 3.963	CUM TOTALS :	82.00	98.00		325.000

SUMMER 2015

COURSE	TITLE	ATT	EARNED	GRD	POINTS
FDSCT 302	INTRO FOOD SCIENCE	3.00	3.00	A	12.000
REPEATED : REPEATED FOR BETTER GPA					
TERM GPA : 4.000	TERM TOTALS :	3.00	3.00		12.000
CUM GPA : 3.965	CUM TOTALS :	85.00	101.00		337.000

FALL 2015

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGEC 501	DATA ANALYSIS AND OPTIMI	3.00	0.00	C	0.000
REPEATED : ORIGINALLY REPEATED COURSE					
AGEC 505	AGRIC MARKET STRUCT	3.00	3.00	A	12.000

* * CONTINUED FROM PREVIOUS COLUMN * *
FALL 2015

AGEC 623	INTERNATION AG TRADE	3.00	3.00	A	12.000
ASI 595	CONT ISSUES ASI/AG	3.00	3.00	A	12.000
TERM GPA : 4.000	TERM TOTALS :	9.00	9.00		36.000
CUM GPA : 3.968	CUM TOTALS :	94.00	110.00		373.000

SPRING 2016

COURSE	TITLE	ATT	EARNED	GRD	POINTS
AGEC 501	DATA ANALYSIS AND OPTIMI	3.00	3.00	A	12.000
REPEATED : REPEATED FOR BETTER GPA					
AGEC 599	FOOD & AGBUS MGMT ST	3.00	3.00	B	9.000
ENGL 200	EXPOSITORY WRITING 2	3.00	3.00	A	12.000
GRSC 101	INTRO GR SCI/INDUST	3.00	3.00	A	12.000
PSYCH 110	GENERAL PSYCHOLOGY	3.00	3.00	B	9.000
REPEATED : REPEATED FOR BETTER GPA					
TERM GPA : 3.600	TERM TOTALS :	15.00	15.00		54.000
CUM GPA : 3.917	CUM TOTALS :	109.00	125.00		427.000

UNDERGRADUATE CAREER TOTALS

UGRD CUM GPA: 3.917	CUM TOTALS :	109.00	125.00		427.000
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GRADUATE CAREER TOTALS

GRAD CUM GPA: 0.000	CUM TOTALS :	0.00	0.00		0.000
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DEGREE	DEGREES AWARDED
DEGREE OF SCIENCE IN AGRICULTURE	
CONFERR DATE 05/14/2016	
DEGREE HONORS : MAGNA CUM LAUDE	
PLAN BACHELOR - AGRICULTURAL ECONOMICS	
SUB-PLAN BACHELOR - AGRICULTURAL ECONOMICS-SPECIALTY OPTION	

* * * END OF RECORD * * *

K. Garrett Kays

6648 Washington Avenue, Apt. C6 | St. Louis, MO 63130 | gkays@wustl.edu | 620-249-4546

WRITING SAMPLE

As a law clerk for the U.S. Department of Commerce, Office of Chief Counsel for Trade Enforcement and Compliance, I prepared the following excerpt for an argument section for a brief to the U.S. Court of International Trade. Due to the length of the brief, this writing sample only includes responses to two arguments by the plaintiff. Below is an abbreviated description of the facts and legal issue discussed in the writing sample.

This case concerns the submission of required questionnaire responses after the established deadline by a mandatory respondent in a countervailing duty review determination. The mandatory respondent subsequently requested a post hoc deadline extension upon receipt of the denial of their submission. The mandatory respondent sued the U.S. Department of Commerce (“agency”) and claimed that the medical condition of the submitting attorney was the cause of the untimely submission and that the agency abused its discretion when enforcing its deadlines. The issue addressed is whether the agency abused its discretion when it denied their untimely submission and post hoc extension request.

I. Commerce Properly Rejected Celik Halat's Untimely Submissions and Complied With 19 U.S.C. § 1677m(d), To The Extent The Provision Applies In This Case

When a party's response to Commerce's questionnaire is deficient, prior to applying facts otherwise available Commerce must, to the extent practicable and subject to the requirements of 19 U.S.C. § 1677m(e), provide the party "an opportunity to remedy or explain the deficiency" in light of relevant time limits. 19 U.S.C. § 1677m(d). In such cases, Commerce "shall not decline to consider" information so long as each of five conditions specified by section 1677m(e) is satisfied—including that the information is (1) timely, (2) verifiable, (3) not so incomplete as to be unreliable, (4) based on the party's cooperation to the best of its ability, and (5) usable without undue difficulties. *See* 19 U.S.C. § 1677m(e). If the response remains deficient, Commerce may disregard "all or part of the original and subsequent responses". *Id.* § 1677m(d).

Celik Halat points to 19 U.S.C. § 1677m(d) and claims that Commerce must provide the opportunity to correct their submission's deficiencies in a "practicable" manner. Celik Halat Br. 25-26 (citing 19 U.S.C. § 1677m(d)). However, as Celik Halat concedes, it failed to submit the "final business proprietary and public versions of its response to section III of the initial questionnaire {by the deadline}." IDM at 35 (citing Celik Halat Reconsideration Request at 2), P.D. 370. The remedial provisions of 19 U.S.C. § 1677m(d) are not triggered unless the respondent has met all five enumerated criteria under 19 U.S.C. § 1677m(e). *See Tung Mung Dev. Co., Ltd. v. United States*, 25 C.I.T. 752 (2001). Failure to fulfill any one criterion renders § 1677m(d) inapplicable. *Id.* Because Celik Halat failed to satisfy two of the criteria of 19 U.S.C. § 1677m(e) by submitting an untimely questionnaire and failing to act to the best of its ability, 19 U.S.C. § 1677m(d) cannot serve as an alternative means to submit untimely submissions. *See* 19 U.S.C. § 1677m(e)(1),(4); *See also* IDM at 35 (finding that "Celik Halat

failed to cooperate to the best of its ability to comply with Commerce’s request for information, within the meaning of section 776(b)(1) of the Act”), P.D. 370.

Celik Halat cites two cases where Commerce did not satisfy 19 U.S.C. § 1677m(d), both of which address inapposite issues. Celik Halat Br. 26-27 (citing *Shelter Forest Int’l Acquisition, Inc. v. United States*, 497 F. Supp. 3d 1388 (Ct. Int’l Trade 2021); *China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337 (Ct. Int’l Trade 2007)). Celik Halat first cites *Shelter Forests* in that Commerce abused its discretion by “rejecting Shelter Forest’s {timely} submission as untimely when it had not provided notice to Shelter Forest regarding deficiencies, as required by 19 U.S.C. § 1677m(d).” *Shelter Forest*, 497 F. Supp. 3d at 1401. Celik Halat also cites *China Kingdom*, where this court said that Commerce did not comply with 19 U.S.C. § 1677m(d) by rejecting deficiency submissions when the respondents discovered the deficiency and tried to correct it significantly prior to the preliminary determination. *China Kingdom*, 507 F. Supp. 2d at 1352-54. Both *Shelter Forests* and *China Kingdom* are distinguishable simply by the fact that Celik Halat “failed to submit its response to section III of the questionnaire **by the established deadline**” for the preliminary determination. IDM at 34 (P.D. 370) (emphasis added). Given that Celik Halat did not satisfy the timeliness criteria of 19 U.S.C. § 1677m(e)(1) or file submissions according to the best of its ability in accordance with 19 U.S.C. § 1677m(e)(4), Commerce’s decision to not accept these untimely submissions was proper. 19 U.S.C. § 1677m(d), 1677m(e)(1),(4).

II. Plaintiff’s Attempt To Distinguish Case Law Is Futile

Plaintiff fails to acknowledge that the two Court decisions on which they rely—*Artisan Manufacturing Corp. v. United States*, 978 F. Supp. 2d 1334 (Ct. Int’l Trade 2014), and *Grobest & I-Mei Industries Co. v. United States*, 815 F. Supp. 2d 1342 (Ct. Int’l Trade 2012) are

inapplicable in this case based on different factual and legal scenarios. *See* IDM at 36-37, P.D. 370. Most importantly, *Artisan* and *Grobest* have since been made irrelevant by the Federal Circuit and by regulation. *See Dongtai Peak Honey Indus. Co. v. United States*, 777 F.3d 1343, 1351 (Fed. Cir. 2015) (*Dongtai II*); *See also* 19 C.F.R. § 351.302(c) (2020). As discussed below, plaintiff offers no new legal authorities that would require this Court to set aside Commerce’s proper application and enforcement of its deadline.

“In *Artisan*, Commerce rejected a respondent’s timely filed separate rate application as well as its untimely filed quantity and value response, denying the applicant’s separate rate request and assigning the applicant a margin based on AFA.” IDM at 36, P.D. 370; *See Artisan*, 978 F. Supp. 2d at 1337-40. “The Court, in determining that Commerce abused its discretion, noted that Commerce was ambiguous in stating its policy on time extensions for the information at issue and that its determination was based on ‘*the particular circumstances of this investigation.*’” *Id.* at 1344, 1347-1348 (emphasis in original); IDM at 36, P.D. 370. “Thus, the facts in *Artisan* stand in contrast to those present here, where Commerce: (1) established clear, unambiguous deadlines for submitting the requested information; and (2) notified interested parties of the consequences for untimely filings.” IDM at 36, P.D. 370.

“Commerce and the courts have noted repeatedly that *Grobest* pre-dates Commerce’s revision of its rules on the establishment and enforcement of deadlines as well as subsequent Federal Circuit precedent.” IDM at 36-37, P.D. 370; *See ArcelorMittal USA LLC v. United States*, 399 F. Supp. 3d 1271, 1281 (Ct. Int’l Trade 2019) (citing *Dongtai II*, 777 F.3d at 1351). “Further, even if the decision were applicable, *Grobest* involved the late filing of a separate rate certification that was consistent with information provided to Commerce in several earlier administrative reviews of the same company and was unlikely to prompt further investigation by

Commerce.” IDM at 37, P.D. 370; *See Grobest*, 815 F.Supp.2d at 1366-67. However, “{t}he missing information in this case is the not minor or incidental to Commerce’s subsidy rate calculation; instead, the section III initial questionnaire response that would have established benefit and usage information for all of the initiated programs in an investigation.” IDM at 37, P.D. 370. “Thus, because *Grobest* was based upon earlier, less-stringent regulations, not to mention its facts are inapposite to the facts at issue here,” Commerce properly found that is not applicable. *Id.*

Significantly, the Court in *Artisan* and *Grobest* was applying the prior version of 19 C.F.R. § 351.302, which did not contain the now-existing “extraordinary circumstances” requirement: *Grobest* was decided in 2012, and in *Artisan* the Court reviewed a final determination issued on February 26, 2013—before the regulatory amendment became effective on October 21, 2013. *See Artisan*, 978 F. Supp.2d at 1336; *See also Extension of Time Limits*, 78 Fed. Reg. at 57,790 (applying rule to all segments initiated on or after October 21, 2013).

Even in the case of interpreting a prior version of 19 C.F.R. § 351.302, the Federal Circuit has upheld Commerce’s finding that a party had not shown good cause in requesting an untimely extension request. *See Dongtai II*, 777 F.3d at 1351. In *Dongtai II*, Commerce had issued a supplemental questionnaire to Dongtai Peak with a deadline of April 17th. *See Dongtai Peak Honey Indus. Co. v. United States*, 971 F. Supp. 2d at 1237 (*Dongtai I*). On April 19th, Dongtai Peak filed an untimely request to extend the deadline to April 27th, explaining that it missed the deadline “because of an overlap with the deadline to file its sections C and D questionnaire response, a national holiday, issues with its translator, issues communicating with its U.S.-based attorneys, and a computer failure.” *Id.* at 1238. Commerce concluded that Dongtai Peak had not shown good cause to grant the request.

The Court of Appeals for the Federal Circuit affirmed, holding that Dongtai Peak had not shown good cause. *See Dongtai II*, 777 F.3d at 1351-52. The Federal Circuit emphasized that Commerce does not violate principles of fairness by rejecting an untimely submission where the party had both notice and a meaningful opportunity to be heard. *See id.* On the facts, the Federal Circuit concluded that nothing had prevented Dongtai Peak from submitting a timely extension request.

Dongtai II is particularly instructive here because the Federal Circuit in that case was applying an earlier version of 19 C.F.R. § 351.302. *See Dongtai II*, 777 F.3d at 1351 n.2. That earlier version did not specifically address untimely extension requests. *See* 19 C.F.R. § 351.302(c) (2013). The Federal Circuit nonetheless found no abuse of discretion in Commerce's conclusions, even in the absence of the now express, heightened regulatory requirement that a party seeking to file out of time must demonstrate extraordinary circumstances. *See* 19 C.F.R. § 351.302(c) (2020).

This Court has applied *Dongtai II* to find no abuse of discretion by Commerce when applying the more recent changes to the “extraordinary circumstances” regulation, explaining that “{s}trict enforcement of time limits . . . is neither arbitrary nor an abuse of discretion when Commerce provides a reasoned explanation of its decision.” 19 C.F.R. § 351.302; *ArcelorMittal*, 399 F. Supp. 3d at 1279. In *ArcelorMittal*, a respondent failed to timely comment on Commerce's draft remand results. The respondent submitted an extension request one week after the deadline, claiming that it had just learned of the deadline because its counsel was out of the country when the draft was released and the notification for the draft had been “lost in the email traffic during that period.” *See ArcelorMittal*, 399 F. Supp. 3d at 1275. Commerce rejected the request and this Court, following *Dongtai II*, found no “extremely compelling

circumstances.” *ArcelorMittal*, 399 F. Supp. 2d at 1283. Instead, on the facts and “in light of the ‘important principles of timeliness and finality {that} undergird all aspects of litigation,’” the Court found that it was not an abuse of discretion for Commerce to reject respondent’s untimely extension request and submissions. *Id.* (quoting *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1278 (Fed. Cir. 2012)).

Artisan and *Grobtest* must give way to the Federal Circuit’s reasoning in *Dongtai II*, and to the current regulatory requirement that parties demonstrate “extraordinary circumstances.” 19 C.F.R. § 351.302(c). Plaintiff has not demonstrated an unexpected and reasonably unpreventable event that precluded them from timely filing an extension request. None of the reasons in plaintiffs’ untimely requests constitute an extraordinary circumstance as that term is defined in 19 C.F.R. § 351.302(c)(2).

Applicant Details

First Name	Megan
Last Name	Kelly
Citizenship Status	U. S. Citizen
Email Address	mbkelly@email.wm.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>107 Bicameral Lane</div> <div>City</div> <div>Williamsburg</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>23185</div> </div> </div>
Contact Phone Number	6023154578

Applicant Education

BA/BS From	University of Arizona
Date of BA/BS	May 2017
JD/LLB From	William & Mary Law School
	http://law.wm.edu
Date of JD/LLB	May 15, 2022
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	William & Mary Law Review
Moot Court Experience	Yes
Moot Court Name(s)	William & Mary National Trial Team

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Killinger, Laura R.
lkillinger@wm.edu
757-221-3781

Heymann, Laura A.
laheym@wm.edu
757-221-3812

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Megan Kelly
107 Bicameral Lane
Williamsburg, VA 23185
(602) 315-4578
mbkelly@email.wm.edu

June 14, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at William & Mary Law School graduating in May 2022, and I am writing to apply for a clerkship in your chambers for the 2022-2024 term. I am ranked second in my class with a GPA of 3.9. Additionally, I serve as the Managing Editor of the *William & Mary Law Review* and compete for the nationally ranked William & Mary National Trial Team. I am particularly interested in clerking for you because of the opportunity to stay in the Richmond area and serve in a two-year clerkship.

My professional experiences have prepared me to contribute as a judicial clerk in your chambers. I gained invaluable research and writing experience serving as an extern in the chambers of United States Magistrate Judge Robert J. Krask in the Spring 2021 semester. In this capacity, I researched and drafted legal memoranda, orders ruling on motions, and Reports & Recommendations in habeas proceedings. The externship gave me a greater appreciation of the high levels of excellence and professionalism expected of judicial clerks. Additionally, in my job as a Legal Practice Fellow, I strengthened my legal writing and citation skills by training 1L students in the basics of citations and providing citation grades and feedback on the students' memos. Prior to law school, I worked for two years as a leadership consultant which trained me to adapt quickly, remain highly organized, and communicate clearly and effectively.

My extracurricular activities have further strengthened my abilities to serve as a judicial clerk. As the Managing Editor of the *William & Mary Law Review*, I have developed excellent organizational and editing skills by coordinating each step of the publication process while making substantive and technical edits on all of the articles published in the *Law Review*. Additionally, my experience as Chief Counsel on the William & Mary National Trial Team has enabled me to sharpen my oral communication skills and strengthened my ability to be an excellent leader and team player by managing tight deadlines, seeking input from others, and contributing to the team's camaraderie.

Enclosed for your consideration are my resume, unofficial law school transcript, writing sample, and two letters of recommendation from Professor Laura Killinger and Professor Laura Heymann.

Thank you for your consideration. I would be grateful for the opportunity to interview with you and further discuss my candidacy for a judicial clerkship.

Respectfully,

Megan Kelly

MEGAN KELLY

107 Bicameral Lane, Williamsburg, VA 23185 | mbkelly@email.wm.edu | (602) 315-4578

EDUCATION

William & Mary Law School, Williamsburg, Virginia

J.D. expected, May 2022

GPA: 3.9, Class Rank: 2/230 (tied)

Honors:

William & Mary Law Review, Managing Editor, Vol. 63

William & Mary National Trial Team, Chief Counsel

CALI Award in Torts (highest exam grade)

CALI Award in Civil Procedure (highest exam grade)

CALI Award in Legal Research & Writing (highest class grade)

University of Arizona, Tucson, Arizona

B.A., Creative Writing (Nonfiction), Chinese and Communication (minors), May 2017

GPA: 3.6

EXPERIENCE

United States Department of Justice, Tax Division, Washington, D.C.

Incoming Intern, Summer Law Intern Program (SLIP)

Summer 2021

The Honorable Robert J. Krask, United States Magistrate Judge

United States District Court for the Eastern District of Virginia, Norfolk, Virginia

Judicial Extern

January 2021 to April 2021

Prepared for hearings and settlement conferences by reading briefs and pleadings as well as researching legal claims and identifying cases with similar fact patterns. Drafted opinions and wrote memoranda, including orders on motions to compel discovery and Reports & Recommendations for habeas corpus proceedings. Engaged in discussions with the judge and clerks prior to proceedings to evaluate legal arguments and potential outcomes.

Legal Practice Program, William & Mary Law School, Williamsburg, Virginia

Writing Fellow

August 2020 to May 2021

Served as a teaching assistant for twelve students in Legal Research & Writing and Lawyering Skills classes. Assisted 1L students with questions related to citations and legal writing. Reviewed and graded student citations for all 1L motions and memoranda. Provided mentorship to a small group of students and acted as a professional liaison between students and adjunct professors.

United States Attorney's Office for the District of Arizona, Phoenix, Arizona

Summer Extern, Criminal Division

May to August 2020

Assisted AUSAs with projects within the criminal division. Conducted a long-term research project and wrote a legal memorandum on an emerging topic in federal firearms prosecution. Researched and drafted a response to a motion for compassionate release due to the COVID-19 pandemic. Wrote memoranda providing relevant legal authorities to supervising attorneys for questions regarding sentencing enhancements and delegation of authority in sentencing.

Chi Omega Fraternity, Memphis, Tennessee

National Leadership Consultant

May 2017 to May 2019

Traveled three weeks per month to over forty accounts nationwide. Evaluated organizational efficiency and leadership development. Facilitated over 100 presentations for large audiences about leadership, effective communication, and risk management.

Interests include hiking, reading nonfiction essay collections, meditation and mindfulness, and traveling to all fifty states.

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Except as noted below, students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is conceivable that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

COVID-19 PANDEMIC: GRADES FOR THE SPRING 2020 TERM

In response to disruption caused by the global COVID-19 pandemic, the William & Mary Law School faculty voted to require that every course taught at the Law School during the Spring 2020 term be graded Pass/Fail. This change to Pass/Fail grading for the Spring 2020 term will impact students in our Classes of 2020, 2021, and 2022, including in the assignment of class ranks. Students in the Class of 2022 will first be assigned class ranks following completion of the Fall 2020 term. The class ranks of the students in the Class of 2021 will next be recalculated following completion of the Fall 2020 term. The class ranks of the students in the Class of 2020 will next be recalculated following completion of the Spring 2020 term.

Transcript Data	
STUDENT INFORMATION	
Name :	Megan B. Kelly
Curriculum Information	
Current Program	
Juris Doctor	
College:	School of Law
Major and Department:	Law, Law
***Transcript type:WEB is NOT Official ***	
DEGREES AWARDED	

PAGE 2 OF 4

Sought: Juris Doctor		Degree Date:	
Curriculum Information			
Primary Degree			
College:	School of Law		
Major:	Law		
	Attempt Hours	Passed Hours	Earned Hours
	GPA Hours	Quality Points	GPA
Institution:	59.000	59.000	59.000
	34.000	131.00	3.85
INSTITUTION CREDIT -Top-			
Term: Fall 2019			
Subject	Course	Level	Title
			Grade
			Credit Hours
			Quality Points
			R
LAW	101	LW	Criminal Law
			A
			4.000
			16.00
LAW	102	LW	Civil Procedure
			A
			4.000
			16.00
LAW	107	LW	Torts
			A
			4.000
			16.00
LAW	130	LW	Legal Research & Writing I
			A
			2.000
			8.00
LAW	131	LW	Lawyering Skills I
			H
			1.000
			0.00
Term Totals (Law - First Professional)			
			Attempt Hours
			Passed Hours
			Earned Hours
			GPA Hours
			Quality Points
			GPA
Current Term:			15.000
			15.000
			15.000
			14.000
			56.00
			4.00
Cumulative:			15.000
			15.000
			15.000
			14.000
			56.00
			4.00
Unofficial Transcript			
Term: Spring 2020			
Term Comments:	Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.		
Subject	Course	Level	Title
			Grade
			Credit Hours
			Quality Points
			R
LAW	108	LW	Property
			P
			4.000
			0.00
LAW	109	LW	Constitutional Law
			P
			4.000
			0.00
LAW	110	LW	Contracts
			P
			4.000
			0.00
LAW	132	LW	Legal Research & Writing II
			P
			2.000
			0.00
LAW	133	LW	Lawyering Skills II
			P
			2.000
			0.00
Term Totals (Law - First Professional)			

PAGE 3 OF 4

				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				16.000	16.000	16.000	0.000	0.00	0.00
Cumulative:				31.000	31.000	31.000	14.000	56.00	4.00
Unofficial Transcript									
Term: Fall 2020									
Subject	Course	Level	Title			Grade	Credit Hours	Quality Points	R
LAW	309	LW	Evidence			A	4.000	16.00	
LAW	398	LW	Election Law			A-	3.000	11.10	
LAW	402	LW	Crim Pro II (Adjudication)			A-	3.000	11.10	
LAW	720	LW	Trial Advocacy-Nat'l Trial Tm			P	3.000	0.00	
LAW	760	LW	Wm & Mary Law Review			P	1.000	0.00	
Term Totals (Law - First Professional)									
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				14.000	14.000	14.000	10.000	38.20	3.82
Cumulative:				45.000	45.000	45.000	24.000	94.20	3.92
Unofficial Transcript									
Term: Spring 2021									
Subject	Course	Level	Title			Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility			A	2.000	8.00	
LAW	140A	LW	Adv Writing&Practice:Appellate			A-	2.000	7.40	
LAW	409	LW	International Law			A-	3.000	11.10	
LAW	580	LW	2nd Amend-Hist Theory Prac Sem			B+	2.000	6.60	
LAW	592	LW	Law & Sexuality			A-	1.000	3.70	
LAW	704	LW	ILR National Trial Team			P	1.000	0.00	
LAW	754	LW	Judicial Externship			P	2.000	0.00	
LAW	760	LW	Wm & Mary Law Review			P	1.000	0.00	
Term Totals (Law - First Professional)									
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				14.000	14.000	14.000	10.000	36.80	3.68

Cumulative:	59.000	59.000	59.000	34.000	131.00	3.85
Unofficial Transcript						
TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) -Top-						
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	59.000	59.000	59.000	34.000	131.00	3.85
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	59.000	59.000	59.000	34.000	131.00	3.85

Laura R. Killinger
Director, Legal Practice Program, and Clinical
Associate Professor of Legal Writing

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-3781
Fax: 757-221-3261
Email: jkillinger@wm.edu

June 03, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Letter of Recommendation for Megan Kelly

Dear Judge Hanes:

I am delighted to write in support of Megan Kelly's application for a judicial clerkship. I have observed Megan as a student in my Legal Research & Writing class. In addition to being bright, organized, and a hard-working leader, Megan is the best writer I have taught in nine years of teaching legal writing. I therefore strongly support her application.

I first encountered Megan during her first semester of law school when she was a student in my Legal Writing class. Megan was always prepared for class and had excellent contributions to make. In fact, Megan is the person I turn to in class to answer the most difficult questions that no one else will tackle. Megan is a rare leader, and her classmates benefit because of it.

I was also incredibly impressed with Megan's writing. While it quickly became apparent to me that she was the best writer in the class, Megan never became complacent. Even though her writing was excellent from the very start, she never missed an opportunity to ask me for more feedback to improve her writing. As a result, Megan earned the "CALI Award for Excellence" in my class, which is awarded to the highest grade earner in the class. This grade was based upon legal writing, participation, and professionalism. Megan excelled in each area.

Additionally, Megan is doing exceptionally well academically at William & Mary Law School. Her 3.92 GPA places her second in her entire law school class of 230 students. This accomplishment is even more impressive because of the law school's demanding curve: no more than 10% of students may receive an "A" in each class. To do so in each and every class is impressive, and is a reflection of Megan's outstanding intelligence, hard work, and relentless dedication.

Megan not only takes criticism well, she actually seeks it out. As a result, Megan will be an outstanding student and lawyer, constantly improving and excelling. Megan demands excellence in herself, and her quiet dedication and persistence inspires excellence in those around her. I always looked forward to hearing from Megan in class, and I have no doubt that her presence made the entire legal writing class better.

Lastly, Megan is a kind, courageous, and delightful person. She has established herself as a thoughtful leader and friend among her section mates. They consistently look up to her for guidance, and she is exceedingly generous with her time. I have repeatedly seen her offer assistance to students who need help, and she never hesitates to share a kind word with a person in need. She is deeply concerned about fairness and justice, both in law school and in the world, and I believe that she will use her sense of fairness, thoughtfulness, and brilliance to one day help change the world. I would be delighted to have Megan as a work colleague, and I believe she would be an excellent fit for any chamber.

In short, Megan has demonstrated exceptional leadership and scholarship ability. I believe this clerkship will allow her to further develop her outstanding abilities and serve her community as a thoughtful, intelligent, and compassionate lawyer. I recommend her enthusiastically and without hesitation.

If there is any other information I could provide to you, please do not hesitate to contact me at 757-221-3781.

Laura R. Killinger - lkillinger@wm.edu - 757-221-3781

Sincerely,

/s/

Laura R. Killinger
Director, Legal Practice Program,
and Clinical Associate Professor of Legal Writing

Laura R. Killinger - lkillinger@wm.edu - 757-221-3781

Laura A. Heymann
Chancellor Professor of Law

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-3812
Fax: 757-221-3261
Email: laheym@wm.edu

June 03, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Megan Kelly

Dear Judge Hanes:

By way of introduction, I am a law professor at William & Mary Law School in Williamsburg, Virginia. Megan Kelly, a member of the Class of 2022 here at the Law School, has applied for a judicial clerkship with your chambers. I'm writing to provide my unqualified recommendation of Ms. Kelly, and I hope that you will offer her a clerkship.

Ms. Kelly was a student in my Torts class during the Fall 2019 semester. From the start of the semester, she was a thoughtful and active participant in class. It was clear that she had prepared thoroughly for each session and that she had carefully considered the material beyond a surface-level reading. She engaged with every question I put to her, and she was not at all daunted when — in the tradition of law professors everywhere — I pushed back or asked her to say more to defend her position. It was clear that she enjoyed the process of legal analysis and wanted to improve her already considerable skills in that area.

In addition to a final exam, my Torts students are also required to complete two ungraded practice assignments, for which I provide individual feedback: a short intentional torts hypothetical and a longer, timed negligence hypothetical based on a real-life boating accident. As part of the second exercise, I ask students to engage in a self-assessment of their strengths and areas for improvement before submitting the document to me for feedback. Ms. Kelly's assignments were quite strong, especially for a beginning law student. She made good use of the cases we had studied, deployed counterfactuals to good effect, and presented her analysis in an organized and direct way. She also identified reasonable counterarguments and avoided the tendency of some first-semester law students to throw in every possible argument. Her work struck me as comparable to that of a third-year law student or first-year associate.

I was heartened in particular by her self-assessment on the second assignment. My goal in asking students to assess their own work before submitting it for feedback is to have them practice the ability to review their own work first and identify strengths and areas for improvement. Ms. Kelly's self-assessment was perceptive and insightful. Unlike a few other students, she didn't merely suggest that she needed to prepare more or manage her time more effectively; rather, she identified specific areas for improvement and proposed specific strategies for each. I suspect that her ability to do this is what led to her continued improvement throughout the course and, ultimately, her outstanding performance on the final exam. (She earned a CALI Award for the best exam in the class, an accomplishment she achieved in two additional classes in her first year.)

I have also had the opportunity to review her writing sample, a draft motion for her Spring 2020 Legal Research & Writing course. Her writing strikes me as exceedingly clear and organized, and her analytical skills are strong. Her roadmap paragraphs very effectively lay out the analysis that follows. Although I was not previously familiar with the hypothetical on which the problem was based, after reading the introduction it was immediately clear to me what the motion was asking the court to do and why. As with her practice assignments for my class, Ms. Kelly did an excellent job in this motion of relying on and distinguishing precedent as well as incorporating relevant policy arguments. Indeed, this draft motion strikes me as something that could easily be adapted to form the basis of an opinion disposing of the motion, which strikes me as a good indication of Ms. Kelly's potential as a law clerk. I think she has a growing appreciation for embracing new issues and wrestling with legal problems, and she seems to have taken to this new skill very well.

Laura A. Heymann - laheym@wm.edu - 757-221-3812

I know from my own clerkship (now many years in the past!) that it's important to hire clerks who will contribute to a collaborative working environment in chambers. There is no doubt in my mind that Ms. Kelly will do so. She is engaging and thoughtful, with a sincere appreciation for other's efforts. I am also confident that she will treat everyone in the courthouse, no matter their official position, with respect. I think you will very much enjoy meeting her.

I truly hope that you will give Ms. Kelly's application every consideration. If you have any questions, or if I can be of further assistance, please do not hesitate to get in touch.

Very truly yours,

/s/

Laura A. Heymann
Chancellor Professor of Law

Laura A. Heymann - laheym@wm.edu - 757-221-3812

MEGAN KELLY

107 Bicameral Lane Williamsburg, VA 23185 | (602) 315-4578 | mbkelly@email.wm.edu

WRITING SAMPLE

I prepared this motion for a mock trial tournament in Fall 2020. I began with pretrial documents, depositions, and exhibits, and conducted all research and writing independently. This motion has been edited for brevity and to exclude any portions of the motion that involved collaboration with teammates. All characters are fictional. All writing included is entirely my own.

SUMMARY OF THE CASE

This is a memorandum support of a motion to suppress evidence obtained through an FBI wiretap. The FBI obtained a warrant and wiretapped a phone call between Tony Falsetto, known leader of the Falsetto crime syndicate, and his associate, Bobby Acapella. The FBI agent who obtained the warrant appeared to disregard information from the anonymous tip that stated Corrado Andante established and ran money laundering scheme. The agent instead insisted that the FBI should investigate and execute a wiretap warrant on Mr. Andante's nephew, Tony Falsetto.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW COLUMBIA

_____)	
)	
UNITED STATES OF AMERICA)	Hon. Joseph Maldonado-Passage
)	
)	
)	Crim. No. 19-900530
v.)	
)	
)	Violations:
TONY FALSETTO,)	18 U.S.C. § 1962(c)
)	Racketeering
DEFENDANT.)	
)	
_____)	

MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO SUPPRESS

EXHIBIT I

ARGUMENT

The Government obtained and executed its wire surveillance of Mr. Falsetto in violation of Title III of the Omnibus Crime Control and Safe Streets Act. *See* 18 U.S.C. § 2516. A valid search warrant or wiretap order must be supported by probable cause, a determination that is “based upon the totality of circumstances known” at the time of the application. *United States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001); 18 U.S.C. § 2518(3). When the reviewing court makes this determination, however, it is “limited to [reviewing] the information and circumstances contained within the four corners of the underlying affidavit.” *United States v. Stanert*, 762 F.2d 775, 778 (9th Cir. 1985). Because the court must conduct its review of the application with “the affiant's good faith as its premise,” it is imperative that the affidavit provide the full story so as not

to mislead the court in making a probable cause determination. *Stanert*, 762 F.2d at 781. In this case, the government failed to establish that normal investigative procedures had been tried and failed. Additionally, the government failed to execute the warrant in such a way as to minimize the interception of communications not otherwise subject to interception. These failures, individually and combined, warrant the suppression of Exhibit I, the telephone conversation between Mr. Falsetto and Bobby Acapella on August 7, 2019. *See* 18 U.S.C. § 2515.

If a court finds a search warrant invalid, the typical remedy is exclusion of the evidence seized improperly. *Stanert*, 762 F.2d at 781. In some circumstances, the government may assert that in spite of the invalidity of the warrant, the court may still admit the evidence because the government acquired it in good faith. *See id.* *United States v. Leon* established such an exception. 468 U.S. 897, 923 (1984). That exception does not apply to warrants obtained under Title III because the statute does not provide for such an exception. *See* 18 U.S.C. §§ 2515-18. Even if this Court finds that the good faith exception may apply to Title III warrants, however, it should not apply the exception to this specific warrant because Agent Kuperberg acted in bad faith. *See id.* Courts should use “fact-intensive, case-by-case analysis” in determining whether good faith exists. *United States v. Vigeant*, 176 F.3d 565, 572 (1st Cir. 1999). Courts should evaluate to what extent the officer’s statements, omissions, and behaviors intentionally misled the magistrate or prevented the judge from being able to make a “valid assessment of the legality of the warrant.” *United States v. Reilly*, 76 F.3d 1271, 1280 (2d Cir. 1996). Based on the unwieldy course of Agent Kuperberg’s investigation, his statements to his partner, and a comparison between the realities of the circumstances and the written words in the agent’s affidavit, it is demonstrable by a preponderance of the evidence that the agent acted in bad faith. Thus, the illegally obtained evidence should be suppressed. *Id.*

I. EXHIBIT I SHOULD BE SUPPRESSED BECAUSE THE GOVERNMENT OBTAINED AND EXECUTED ITS WIRE SURVEILLANCE OF MR. FALSETTO IN VIOLATION OF TITLE III.

[Omitted.]

II. THE COURT SHOULD NOT APPLY THE *LEON* GOOD FAITH EXCEPTION TO THIS INVALID WARRANT BECAUSE THE GOOD FAITH EXCEPTION CATEGORICALLY DOES NOT APPLY TO TITLE III WARRANTS AND BECAUSE THE GOVERNMENT AGENT ACTED IN BAD FAITH.

A. The Leon good faith exception categorically does not apply to wiretap warrants obtained under Title III, based on the plain language of the statute, its legislative history, and sound policy considerations.

First, the plain language of the statute demonstrates that suppression is the sole statutory remedy for invalid and improper warrants. *See* 18 U.S.C. § 2515. Section 2515 states that any wire or oral communication intercepted in violation of the chapter should not be admitted as evidence; the section creates no express exceptions. *Id.* Because statutory text reflects the conscious and deliberate will of Congress when implemented, the courts should defer to that will. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1982). When the statutory language is reasonably clear, the court should treat it as conclusive and refrain from expanding upon the meaning of the text. *Id.*; *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 445 U.S. 102, 108 (1980).

This plain language approach contrasts with the Fourth Amendment approach, by which the courts created the exclusionary rule and the good faith exception to that rule. The Fourth Amendment’s remedies, exceptions, and extensions are judicially created. *See Davis v. United States*, 564 U.S. 229, 238 (2011). For example, the Supreme Court established the exclusionary rule as a means to protect an individual’s constitutional rights against unlawful searches and seizures by excluding illegally obtained evidence. *See Mapp v. Ohio*, 367 U.S. 643, 659-60 (1961). Later, the Court added the good faith exception to this rule. *Leon*, 468 U.S. at 913. The exception provides an avenue to admit unlawfully seized evidence, despite its flaws, as long as the

government can demonstrate that the warrant was invalid only as a result of good faith negligence or mistake. *Id.* The Supreme Court decided that if there is no improper conduct to deter, it is in the interest of justice to admit even improperly seized evidence. *Id.* Thus, the exclusionary rule is a judicially created remedy for individuals, and the good faith exception is a judicially created safeguard for law enforcement. When Congress enacted Title III, it codified the idea behind the exclusionary rule in Section 2515, establishing that illegally obtained warrants would not be admissible evidence. *See* 18 U.S.C. § 2515. Congress did not, however, codify the safeguard of the good faith exception anywhere in the statute. *Id.* This decision demonstrates that Congress intended this safeguard to remain available only in Fourth Amendment violations, not Title III violations. *See id.*

The command to accept the statute's meaning on its face is strengthened by the fact that Congress has amended this statute many times, and with each amendment it has repeatedly elected not to add any provisions that create a good faith exception for Title III warrants. *See* 18 U.S.C. §§ 2515-18 (reflecting more than twenty amendments since its time of passage). Congress amended the statute as recently as 2010, years after both the *Leon* decision and the Sixth Circuit decision holding that the good faith exception does not apply to Title III warrants. *See* 18 U.S.C. § 2519 (2010) (reflecting 2010 amendments to the statute); *United States v. Rice*, 478 F.3d 704, 706 (6th Cir. 2007) (holding that the good faith exception is reserved for Fourth Amendment violations and categorically does not apply to Title III warrants). If Congress took issue with the holding in *Rice*, it could have amended the statute to allow for the exception. *See Rice*, 478 F.3D at 706. Since it did not, the assumption remains that this Court should not either.

Both the Sixth Circuit and the D.C. Circuit have come to the same conclusion based on the plain language of the statute. *See Rice*, 478 F.3d at 706; *United States v. Glover*, 736 F.3d 509,

516 (D.C. Cir. 2013). The Eighth Circuit argues, however, that the statute on its face indicates that suppression is optional under Section 2518, making the good faith exception a necessary protection for defendants. *See United States v. Moore*, 41 F.3d 370, 376 (8th Cir. 1994) (asserting that the statute is written to imply that suppression is discretionary). This is not the case. While the statute says, “[i]f the [suppression] motion is granted, the ... evidence derived [from the wiretap], shall be treated as having been obtained in violation of this chapter,” it does not confer absolute discretion on the court. 18 U.S.C. § 2518; *Rice*, 478 F.3d at 713. The word “if” merely expresses the consequence that follows should a court find that a communication was unlawfully intercepted. *See id.* In fact, Section 2515 clearly mandates suppression when any evidence is obtained illegally pursuant to the Title III statute. *See* 18 U.S.C. § 2515 (emphasizing that *whenever* a wire or oral communication is intercepted it cannot be used as evidence if obtained in violation of the statute). This does not confer discretion on the courts, nor does it call for any exception.

Additionally, the legislative history of the statute indicates that the good faith exception should not apply. The Omnibus Crime Control and Safe Streets Act of 1968 Senate Report (“Senate Report”) clarifies Congress’s intentions at the time of the statute’s passage. S. Rep. 90-1097 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2185. The report states that wiretaps seriously invade the personal privacy of the target and acknowledges that Congress debated the legality of wiretap warrants for decades prior to passing the Act. *See id.* at 2161. This consideration shows the uniquely personal nature of wiretap invasions. With full understanding of the invasiveness of wiretaps, Congress undertook the sensitive task of weighing the benefits and burdens of authorizing them.

As part of its assessment, Congress stated that Title III was meant to reflect *existing* law at the time of its adoption. *Id.* at 2185. At the time of Title III’s adoption, *Leon* was simply not

existing law. Congress in no way contemplated the value or harm of a good faith exception when such an exception did not yet exist. In evaluating how Title III violations should be remedied, Congress weighed the burden that suppression places on the government with the benefit it provides to defendants whose rights are violated, because those were the benefits and burdens that “existing law” contemplated. *See id.* After balancing these interests, Congress constructed the statute to encompass *only* the exclusionary rule. As a result, courts should apply only the exclusionary rule, not the good faith exception, to Title III wiretap warrants.

B. Even if the good faith exception applies to warrants obtained under Title III, the Court should not apply the exception in this case because Agent Kuperberg’s improper conduct and misleading affidavit demonstrate that the warrant is invalid and a result of bad faith.

Leon paved the way for a subset of illegally obtained evidence to be admitted in court. 468 U.S. at 913. The *Leon* Court made it clear, however, that there are numerous circumstances in which the exception will not apply, including when a magistrate “was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.” *Id.* at 898. When evaluating an officer’s or agent’s deliberate falseness or reckless disregard for the truth, courts use a fact-based, case-by-case inquiry. *Vigeant*, 176 F.3d at 572. The Court can evaluate the nature of the lies or omissions made in the affidavit, the weight of the information that was omitted, and any additional statements the affiant made. *Id.* at 573-75. If the Court determines by a preponderance of the evidence that the affiant was lying or omitting information in bad faith, the exception does not apply, and the evidence should be suppressed. *United States v. Garcia*, 785 F.2d 214, 222 (8th Cir. 1986).

Agent Kuperberg’s conduct throughout his investigation indicates that he had an agenda to target Mr. Falsetto from the beginning of his investigation and that he was willing to use drastic and untruthful measures to do so. Statements to his confidential informant and his partner, Agent

Melfi, indicate that he was strongly suspicious of Mr. Falsetto despite the anonymous tip pointing the agents in a different direction. While there is nothing inherently wrong with suspicion, *mere* suspicion is not enough to obtain a warrant of this nature. *See United States v. Han*, 74 F.3d 537 (4th Cir. 1996). Agent Kuperberg conducted this investigation on suspicion alone. As his investigation progressed, he failed to acquire evidence pointing directly to Mr. Falsetto. However, instead of reevaluating his case, he began to insist that his confidential informant “pin the McBurger thing on Falsetto” and “tie this McBurger scheme to Falsetto any way you can.” (Ex. F at 62; Ex. E at 62.) These statements, coupled with Agent Kuperberg intentionally shutting off the FBI recording device during a meeting with the informant, suggest that the agent was asking his informant to lie and give the government incorrect information that pointed to Mr. Falsetto. (Ex. E at 62.) His determination to pin the scheme on Mr. Falsetto irrespective of the evidence demonstrates a clear and conscious choice to maximize Mr. Falsetto’s involvement, rather than to reasonably pursue the evidence and include his honest findings in the affidavit.

Additionally, the nature of Agent Kuperberg’s misstatements and omissions indicate that he made them in bad faith. While there is no blanket category of errors that the good faith exception covers, it typically covers mistakes such as clerical errors, missing signatures, or immaterial misstatements. *See Herring v. United States*, 555 U.S. 135, 144-45 (2009); *United States v. Richardson*, 943 F.2d 547 (1st Cir. 1991); *Franks v. Delaware*, 438 U.S. at 164. While these errors may make a warrant invalid, courts elect to treat them as innocent or harmless. *See Franks*, 438 U.S. at 162. This harmlessness is contrasted with cases in which the affiant intentionally misrepresents the facts in his affidavit. For example, in *United States v. Reilly*, an officer applied for a search warrant to search the defendant’s land where the officer believed the defendant was growing marijuana. 76 F.3d at 1280. As the basis for his warrant, the officer included that he and

another officer were walking on the land, smelled marijuana, and followed until they saw marijuana plants. *Id.* In the warrant, the officers failed to include two facts: an in-depth description of where on the property they had smelled and seen the marijuana and the fact that the officers had first searched the land a year earlier. *Id.* By omitting this information, the court found that the application was “almost calculated to mislead,” emphasizing that omissions can be made in bad faith. *Id.* The court further stated that “the good faith exception to the exclusionary rule does not protect searches by officers who fail to provide all potentially adverse information to the issuing judge, and for that reason, it does not apply here.” *Id.*

Agent Kuperberg’s case was brimming with potentially adverse information well beyond what was present in *Reilly*. In *Reilly*, the court would not apply the good faith exception when the officers failed to disclose two potentially adverse facts: a prior search and a bare-bones description of the house. *Id.* Agent Kuperberg failed to disclose many facts about an entirely separate reliable suspect. This failure to disclose begins with a lie in Agent Kuperberg’s affidavit. Agent Kuperberg wrote that his anonymous tip said to look at the winners list and “did not provide any additional information.” (Kuperberg Aff. ¶ 26.) This is untrue. In fact, the tip told him to start with Corrado Andante. (Ex. A at 42.) Not only did the agent refuse to look into Mr. Andante at the outset, he ignored Mr. Andante at every other step of the investigation. Agent Kuperberg’s confidential informant repeatedly informed him that Mr. Andante was behind the scheme. Much of the evidence pointed directly to Mr. Andante, including the pieces being moved through his known hangout location and an undercover agent getting set up to buy a game piece from someone in Mr. Andante’s crew. Additionally, Agent Kuperberg’s own partner on the case insisted that they shift gears and look into Mr. Andante, reasoning that they were “nowhere near probable cause” on Mr. Falsetto but that Andante was “not a bad catch.” (Melfi Compl. 36; Ex. E at 61.) Because he lied

and failed to adequately account for the overwhelming evidence pointing to Mr. Andante in his affidavit, the agent's dishonesty misled the court. This prevented the judge from meaningfully deciding on the legality of the warrant, and thus requires suppression.

CONCLUSION

The only remedy available under the statute for the Government's violation of Title III is suppression of the evidence: in this case, Exhibit I. Before executing its warrant, the Government not only failed to establish probable cause that Mr. Falsetto was about to commit or had committed a crime, but also failed to establish that normal investigative procedures were already tried and had failed. Once the Government obtained a wiretap warrant, law enforcement officers failed to execute the warrant in such a way as to minimize the interception of communications not otherwise subject to interception.

The Government asserts that the *Leon* good faith exception applies; however, this exception does not apply to Title III warrants. The plain language of the statute does not provide for an exception and the legislative history indicates that not providing such an exception was Congress's intention. However, even if the Court finds that the good faith exception does apply to Title III warrants generally, the Court should not apply it here because Agent Kuperberg's conduct is exactly the type of conduct that the exception does not cover—conduct that must be deterred. Evidentiary suppression in this case would serve to deter future agents from making material misrepresentations in wiretap applications. Human error is inevitable, but deliberate omissions and misstatements are not errors: they are intentional choices that this Court should not condone. Therefore, the Court should grant Mr. Falsetto's Motion to Suppress.

Applicant Details

First Name **Catherine**
Middle Initial **J**
Last Name **Kim**
Citizenship Status **U. S. Citizen**
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Contact Phone Number **6464603422**

Applicant Education

BA/BS From **State University of New York-
Binghamton**
Date of BA/BS **May 2011**
JD/LLB From **The George Washington University
Law School**
<https://www.law.gwu.edu/>
Date of JD/LLB **May 20, 2018**
Class Rank **I am not ranked**
Law Review/Journal **Yes**
Journal(s) **Federal Circuit Bar Journal**
Moot Court Experience **No**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/
Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

CATHERINE JUNGMIN KIM

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August 26, 2020

The Honorable Elizabeth W. Hanes
United States District Court
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a 2018 graduate of The George Washington Law University School. I am respectfully applying for the law clerk position in your chambers for the 2021-2023 term.

Prior to law school, I worked as a litigation legal assistant at Schulte Roth & Zabel (“Schulte”). One of the cases to which I was assigned was *Hurrell-Harring et al. v. State of New York*. The case was a *pro bono* class-action lawsuit against New York for deficiencies in its indigent defense system. During the two years of working on this case, I developed valuable skills required in complex litigation.

During law school, I interned for Chief Judge Beryl A. Howell in the U.S. District Court for the District of Columbia. During my judicial internship, I learned directly from Chief Judge Howell and gained invaluable insight into federal civil and criminal proceedings from a judicial perspective. My experience there continues to inform my current practice and I hope to clerk in your chambers to continue learning the law. During my 2L year, I interned at the Federal Public Defender for the District of Columbia where I learned about federal criminal procedure and sentencing guidelines. As a summer associate at Schulte, I worked almost exclusively on a public corruption case that went to trial the following year.

As an M&A and Securities associate at Schulte, I developed a comprehensive understanding of corporate transactions. I worked on a variety of matters, such as complex public acquisitions, private equity fund investments, SEC filings, and shareholder activist campaigns. I am confident that this experience will give me deeper insight into litigation that arise out of such corporate transactions. Additionally, I actively worked on many *pro bono* matters to further sharpen my legal research and writing skills. Recently, as an associate at Ellenoff Grossman & Schole LLP, I focus my practice in advising clients of state and federal securities laws, with respect to special purpose acquisition companies.

I am confident that my background and experience have prepared me well to be a successful law clerk. I am available for an interview at your convenience. Thank you for your time and consideration of my candidacy.

Respectfully,

Catherine Jungmin Kim

CATHERINE JUNGMIN KIM

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EDUCATION

The George Washington University Law School	Washington, DC
Juris Doctor	May 2018
Activities: <i>Executive Editor</i> , Federal Circuit Bar Journal; <i>Member</i> , Anti-Corruption & Compliance Association	
Binghamton University	Binghamton, NY
Bachelor of Arts, <i>magna cum laude</i> , in Political Science; Minor in Spanish	May 2011
Activities: <i>President</i> , Professional Fraternity Council; <i>Drummer</i> , Traditional Korean Percussion Band	

EXPERIENCE

Ellenoff Grossman & Schole LLP	New York, NY
<i>Corporate Associate</i>	July 2020 – Present
<ul style="list-style-type: none"> Advise clients on federal and state securities laws Represent issuers and underwriters to form special purpose acquisition corporations 	
Schulte Roth & Zabel LLP	New York, NY
<i>M&A and Securities Associate</i>	October 2018 – February 2020; <i>Summer Associate</i> , May – July 2017
<ul style="list-style-type: none"> Represented clients in all aspects of investment portfolio companies, from acquisition through exit, as well as public and private securities offerings, strategic mergers, carve outs and recapitalizations Drafted memoranda on federal, state, and local laws affecting potential strategic private equity investments in the financial technology, health services, education and agricultural sectors Drafted various agreements, including purchase and merger agreements, stockholders' agreements Assisted clients with ongoing corporate governance matters, including reviewing and drafting corporate organizational documents, certificates, consents, opinions and resolutions Conducted thorough due diligence and draft diligence memoranda for internal and external review Filed disclosure documents for SEC reporting companies, including Forms S-4, 10-K, 10-Q, and 8-K Participated in various <i>pro bono</i> projects, including the Misdemeanor Project for the Vera Institute 	
<i>Litigation Legal Assistant</i>	May 2013 – July 2015
<ul style="list-style-type: none"> Assisted attorneys in white collar defense and investigations, securities enforcement, and commercial litigation Cite-checked legal memoranda and reviewed all court filings to ensure compliance with local court rules Organized and maintained over ten discovery databases and privilege logs for efficient review by attorneys Led trial support team and served as primary contact for class members in a class-action <i>pro bono</i> case for public defense reform in New York, from summary judgment to trial preparation and settlement 	
Federal Public Defender for the District of Columbia	Washington, DC
<i>Judicial Intern</i>	September 2016 – November 2016
<ul style="list-style-type: none"> Drafted motion for a downward departure from the U.S. Sentencing Guidelines in a federal criminal case Researched and drafted memorandum of law on a breach of plea agreement for appeal in the D.C. Circuit Observed various court hearings, trials, and appellate oral arguments 	
United States District Court for the District of Columbia	Washington, DC
<i>Judicial Intern for The Honorable Beryl A. Howell, Chief Judge</i>	May 2016 – July 2016
<ul style="list-style-type: none"> Drafted opinion regarding a motion for summary judgment arising under the Freedom of Information Act Researched and drafted memoranda on substantive and procedural issues, including SEC sanctions, bifurcation of discovery in class actions, and federal sentence enhancements Analyzed <i>pro se</i> filings and drafted orders pursuant to the Federal Rules of Civil Procedure 	

ADMISSIONS, LANGUAGES & INTERESTS

- Admitted in New York
- Korean (native) and Spanish (limited working proficiency) language skills
- Interests include: urban gardening, true crime documentaries and podcasts, and Sherlock Holmes short stories

Catherine Kim
The George Washington University Law School

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Research and Writing		B+		
Civil Procedure I		B		
Contracts I		B		
Torts		B+		
Criminal Law		A		

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Advocacy		B+		
Contracts II		C+		
Constitutional Law I		B-		
Civil Procedure II		B		
Property		C		

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Trade Law		B+		
Evidence (Skills)		B-		
Corporations		B		
College of Trial Advocacy		B+		

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Professional Responsibility/ Ethics		B		
Anti-Corruption and Compliance		CR		Credit Received
Drugs and the Law		A		
Criminal Procedure		B+		
Securities Regulation		B		

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Mergers and Acquisition		B		
Adjudicatory Criminal Procedure		A-		
White Collar Crime		B+		

State and Location Taxation	B+	
Conflict of Laws	CR	Credit Received

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law/Procedure Seminar		B+		
Trust and Estates		A-		
International Criminal Law		A		
Constitutional Law II		A		

April 24, 2020

Honorable Judge

re: Catherine Kim

Dear Judge,

I am writing in support of Ms. Catherine Kim's application for a clerkship with your office. From the start, I should say that I recommend her without reservation or hesitation. I have known Ms. Kim for the past three years as she was a student of mine at The George Washington University Law School. I view such letters as very important and only recommend my very best students. Ms. Kim is one of them.

I have taught at GWU since 1995 at the law school and in the public policy school. I have taught hundreds of students. I can say that Ms. Kim is one of the brightest students I have ever had the opportunity to teach. Indeed, there are few graduate students who matched her intelligence or maturity when it comes to education. She is hard working. In her studies with me, she was always prepared. She is intellectually curious. And, she is committed to learning for learning sake – a refreshing difference from many students who take classes merely as a means to obtaining a degree. She is also an excellent writer.

Ms. Kim was an outstanding student. People who have both natural intellectual talent and a commitment to doing things right are exceptional. Catherine is one of those people. I have no doubt she will contribute to the work of your office in a meaningful way. She is a perfect candidate for a clerkship. And I can think of no one more deserving. If I can offer any additional information, please do not hesitate to contact me at 703-623 6515.

Sincerely,

/s/

David Brunori

Research Professor of Public Policy
Professorial Lecturer in Law
The George Washington University

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December 30, 2019

Re: Catherine Kim

To Whom it May Concern:

I am pleased to write this general letter of recommendation on behalf of Catherine Kim. I am Special Counsel for Pro Bono Initiatives at Schulte Roth & Zabel where Catherine worked as a paralegal before attending law school, as a summer associate while in law school and as a first-year associate thereafter. During each of these times I had extensive contact with her as it was clear from the beginning that part of her motivation to become a lawyer was based on using the law on behalf of poor and marginalized people.

In 2007 my firm commenced as a pro bono matter, the case of *Hurrell-Harring et al. v. State of New York, et al* a class-action lawsuit against the State for deficiencies in its indigent defense system. It was settled on the eve of trial in 2014 on quite beneficial terms with the firm having devoted over 30,000 hours to the matter.

Catherine was the lead paralegal on this matter providing support in all phases of the case. Throughout, she managed large volumes of discovery, pleadings, and case files: assisted with legal research; and worked closely with the attorneys on the preparation of written motions, briefing, and discovery responses. She cite checked and conformed citations according to Bluebook rules. As trial approached Catherine was our coordinator. She arranged and took notes for meetings, monitored web sites and court orders, indexed and hyperlinked charts of exhibits and memos, produced a trial calendar, and was the point of contact for class member outreach. She ran every aspect of our trial office in Albany, ensuring that everything from sufficient paper for the giant Xerox machines to telecommunications were in order. In short, she was the person to whom we turned when logistics seemed to threaten order. Catherine handled all of these tasks with diligence, attention to detail and good humor. I cannot remember a single instance when I asked that something be done, that there was even a delay in its execution.

I was happy to write a letter for Catherine as she applied to law school and was excited that she chose to return to Schulte Roth after graduation. When she started full-time as an associate, she volunteered immediately for pro bono work. Her primary assignment was with the Misdemeanor Project of the Vera Institute of Justice. In preparation for bail reform in New York, Catherine was part of a team that researched bail issues in other jurisdictions. She wrote a short memo about electronic monitoring and a more extensive one on bail and pre-trial detention in Canada, the United Kingdom and Australia. For each she reviewed the statutes, and took us through arrest to arraignment setting forth the criteria and stake holders in great detail. The final product was well-written, thorough and was acknowledged to be of great value to our client.

I have had numerous discussions with Catherine over the years and know that she will continue to use her legal training in support of the public good. With her maturity and good sense I know she will be an asset to any institution lucky enough to have her. If I may be of further assistance, feel free to contact me at the above number.

Sincerely,

A handwritten signature in blue ink, reading "Daniel L. Greenberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel L. Greenberg

April, 2020 Re: Catherine Jungmin Kim Catherine Jungmin Kim was a student in two of my classes at Binghamton University (SUNY). In 2008 she was in my International Law class and in 2010 in my Intellectual Property for Bioengineers class. Since that time, we have been in constant contact, so I feel I know her quite well. She was at the top of both classes (which had 95 and 40 students, respectively), and in spite of the passage of time (and what is now over 1000 students) I remember her presentation in intellectual property where she and another student (who is also now a practicing lawyer in New York) compared the IP systems of China and India in the context of American 'globalization' efforts in this field. Her highly unusual skill at making a difficult subject totally comprehensible to the uninitiated, and her ability to understand and convey the cultural differences among three countries (China, India and the United States) which account for the variation in the legal approach to these topics, has been one of the highlights of my memories as a teacher. Her research, analytical, and presentation are top-notch. Over the years, we have, needless to say, spoken of many things – the law, her life (past experience and future aspirations) and the world. It goes without saying that Catherine is extremely intelligent and highly motivated, but she is also much more. She is perceptive, compassionate and highly personable. She has a strong moral compass and a deep understanding of the world around her, both politically and psychologically. If I ever needed a lawyer, I would go to Catherine and be assured that I was in the best legal hands. I recommend her most highly for a Federal clerkship. Sincerely, Virginia Brown Attorney at Law (retired, New York Bar) Visiting Professor, Binghamton University

virginia brown - vmbrown@binghamton.edu - 7186832607

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WRITING SAMPLE

The attached writing sample is based on a longer legal memorandum that I drafted for my upper level criminal law seminar class.

For context, I represented a defendant named John Jones charged with burglary in the District of Columbia. This memorandum argued that Mr. Jones is criminally incompetent to stand trial based on multiple medical evaluations. For the purpose of the exercise, the defense was not permitted to assert that the defendant was unable to communicate effectively with counsel. Both parties stipulated that Dr. Richard Ratner was qualified as an expert in psychiatry.

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA,)	
)	
<i>Prosecution,</i>)	
)	
v.)	Case No. XXXXXXXXX
)	
JOHN JONES)	
)	
<i>Defendant,</i>)	
)	

PRE-HEARING MEMORANDUM IN SUPPORT OF
THE MEDICAL EXPERT’S REPORT

Statement of Facts

I. Mr. Jones' Medical History

Mr. John Jones suffered from mental illness throughout his life. *See* Pretrial Competency and Criminal Responsibility Evaluation 6-10 (Feb. 3, 2017). Mr. Jones' battle with mental illness began when he was just fifteen years old and he was hospitalized for a year from severe behavioral issues. *Id.* at 9. After dropping out of high school and obtaining his GED, Mr. Jones was unsuccessful in maintaining steady employment due to his mental illness, which included crippling paranoid delusions. *Id.* at 7. In 1995, Mr. Jones was involved in minor theft for which he was found not criminally responsible and placed on a five-year conditional release. *Id.* From 1996 to 2002, Mr. Jones was admitted to Spring Grove Hospital Center ("SGHC") in order to treat his "bizarre thought-content, grandiose paranoid delusions, ideas of reference, mood liability, and inappropriate affect." *Id.* Mr. Jones was diagnosed and treated for "Schizophrenia, Paranoid Type, Schizoaffective Disorder, Alcohol Dependence, and Personality Disorder Otherwise Specified with Antisocial Personality and Dependent Traits." *Id.* at 10.

After his release from SGHC, Mr. Jones received further psychiatric rehabilitation services from an outpatient program. *Id.* at 4. During this time, he was gainfully employed at a factory, had his own apartment, took his medication regularly, and had a positive relationship with the staff at the outpatient program. *Id.* Mr. Jones stopped participating in the outpatient program, when the staff erroneously told him that there was a warrant for his arrest. *Id.* Mr. Jones deeply feared being placed back in a mental hospital and became depressed and extremely paranoid. *Id.* Without family or friends, Mr. Jones lived in the woods and survived the cold and rain by staying in vehicles in junkyards. *Id.* at 4 and 7. It was under these circumstances that the events of the instant case unfolded.

II. Instant Offense

At the time of the alleged offense, Mr. Jones had not received medical treatment for about six months. From the lack of proper medical treatment, Mr. Jones' delusions made him believe that he needed to escape an imminent civil war and find the "Wizard" to take him to the other world. *Id.* at 5. In this state, Mr. Jones robbed the bank in order to pay for his escape.

At approximately 10:03 am, Mr. Jones entered the Bank of America on 1016 No-Place Street NW and handed a teller a handwritten note demanding money and claiming to have a bomb. *Id.* After receiving the cash from the teller, Mr. Jones walked out of the bank. *Id.* There was a video recording of the incident and several eyewitnesses. No one was injured during the robbery. *Id.* at 3. Mr. Jones was arrested and charged with a bank robbery in Washington, D.C., on October 10, 2013. *Id.* at 5.

III. Pretrial Competency and Criminal Responsibility Evaluation

After his arrest, Mr. Jones was admitted to St. Elizabeth's Hospital on November 10, 2015. Between November 2015 and September 2016, Mr. Jones was examined three separate times by four different psychiatrists. *Id.* at 1. Each time, Mr. Jones was deemed not competent to stand trial and not criminally responsible for the alleged offense. *Id.* at 1-2. Following a court order for an additional competency evaluation, Mr. Jones was examined again by Dr. Richard Ratner, a board-certified psychiatrist, who conducted a Pretrial Competency and Criminal Responsibility Evaluation of Mr. Jones on February 3, 2017. *See generally id.*

Consistent with the prior competency and criminal responsibility evaluations, Dr. Ratner reports that Mr. Jones is incompetent to stand trial because of mental defect and is not criminally responsible for the alleged offense. *Id.* Dr. Ratner finds that Mr. Jones' symptoms over the last two decades are "consistent with schizophrenia and mental illness." *Id.* Dr. Ratner also notes that

Mr. Jones' history of alcohol and drug abuse does not impact his competency. *Id.* at 14.

Additionally, Dr. Ratner finds that Mr. Jones committed the offense as a result of his mental illness and was unable to conform his conduct to the requirement of the law. *Id.* at 15-16.

Argument

I. This Court Should Uphold Dr. Ratner's Evaluation because All of the Medical Evidence Supports the Conclusion

Courts have consistently relied on the medical expert report on the issue of incompetency. *Wallace v. United States*, 936 A.2d 757, 768-69 (2007). When the expert opinion "clearly and overwhelmingly points to a conclusion of incompetency, the [fact finder] cannot arbitrarily [ignore] the experts in favor of the observations of laymen." *Strickland v. Francis*, 738 F.2d 1542 (11th Cir. 1984) (citing *Brock v. United States*, 387 F.2s 254, 257 (5th Cir. 1967)). The D.C. Court of Appeals held that expert psychiatric opinion on competency is particularly important because attorneys lack medical psychiatric training and have professional motivations that may render competency issues difficult to weight dispassionately. *Blakeney v. United States*, 77 A.3d 328, 347-48 (2013).

Here, all four competency evaluations unanimously found that Mr. Jones is incompetent to stand trial. Ratner Evaluation at 1-2. Each of the evaluations were conducted by a medical doctor, including a forensic psychiatry fellow and the Director of Pretrial Services. *Id.* Dr. Ratner himself conducted clinical interviews with Mr. Jones at the hospital on four different occasions. *Id.* at 2. There is no factor in the present case to unsettle the unanimous medical conclusion. As such, this Court should find that Mr. Jones is incompetent to stand trial.

II. Mr. Jones' Mental Illness Renders Him Incompetent for the Instant Offense

The Incompetent Defendants Criminal Commitment Act of 2004 ("IDCCA") provides that a defendant is incompetent to stand trial if "as a result of mental disease or defect, a

defendant does not have sufficient present ability to consult with his lawyer or her lawyer with a reasonable degree of rational understanding and has a rational, as well as factual, understanding of the proceedings against him or her.” D.C. Code § 24-531.01(1). This standard stems from *Dusky v. United States*, which further states that competence requires more than being “oriented to time and place and [having] some recollection of events.” 362 U.S. 402, 402 (1960) (per curiam). The purpose of the IDCCA is to “prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment.” *Neely v. United States*, 150 F.2d 977, 979, *cert denied*, 326 U.S. 768 (1945). A defendant is presumed competent unless established otherwise by a preponderance of the evidence. D.C. Code § 24-531.04(b). The burden of proof rests on the party asserting incompetence. *Id.*

In *Drope v. Missouri*, the U.S. Supreme Court held that “evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient.” 420 U.S. 162, 180 (1975). Even when a previous expert report found a defendant competent, the D.C. Court of Appeals held that the trial judge should have ordered further competency examinations when the defendant displayed behavior that provided “sufficient indications that the defendant was not able to consult rationally with his attorney or understand the impact of his actions on the outcome of the trial.” *Pouncey v. United States*, 349 F.2d 699, 701 (1965).¹ Additionally, the D.C. Court of Appeals held that “the fact that defendant can ‘recite charges. . . list witness, and use legal terminology’ is not enough to show competence, ‘for proper assistance in the defense

¹ Such behavior included testimony from the defendant that his attorneys were conspiring against him and pleading guilty to the charge at hand.)

requires an understanding that is rational as well as factual.” *Blakeney*, 77 A.3d at 348 (citing *United States v. Williams*, 113 F.3d 1155, 1160 (10th Cir. 1997)).

Following *Drope*, Mr. Jones’ medical evaluations and irrational belief in the “Wizard” sufficiently establishes Mr. Jones’ incompetency by preponderance of the evidence. All of the medical evaluations found that Mr. Jones suffers from schizophrenia, which is a “chronic and severe mental disorder that affects how a person thinks, feels, and behaves.”² Individuals that suffer from schizophrenia hallucinate and hold “fixed false beliefs or suspicions that are firmly held even when there is evidence to the contrary.”³ Schizophrenia is considered to be caused by “an interaction between genes and a range of environmental factors” and “psychosocial” factors may contribute to the disorder.⁴

Consistent with a schizophrenia diagnosis, Dr. Ratner concludes Mr. Jones does not have a rational understanding of the current proceeding as required by the IDCCA. Ratner Evaluation at 13. Mr. Jones is only able to display superficial understanding of the charges against him as a result of his unyielding delusion in the “Wizard.” The “Wizard” is a psychological manifestation from his mental illness. *Id.* The delusion overrides “whatever his attorney says or does.” *Id.* Dr. Ratner describes current Mr. Jones’ mental state as “living in a fantasy movie” and his “fundamental understanding of the [present] case is that the Wizard is controlling it all and will ensure it all works well for him.” *Id.*

Lastly, Mr. Jones’s history of alcohol and drug abuse should not be relied upon when deciding his incompetence to stand trial. There is no evidence that Mr. Jones was under the

² National Institute of Mental Health, *Schizophrenia*, (Feb. 2016), <https://www.nimh.nih.gov/health/topics/schizophrenia/index.shtml>.

³ World Health Organization, *Schizophrenia: Fact Sheet*, (Apr. 2016), <http://www.who.int/mediacentre/factsheets/fs397/en>.

⁴ *Id.*

influence of alcohol or drugs at the time of the alleged offense. Indeed, Mr. Jones commented that he would not have been able to commit “if [he] was using drugs” during his evaluation with Dr. Ratner. *Id.* As such, Mr. Jones’ untreated schizophrenia was the impetus of the alleged offense.

Given the unanimous medical evidence in support of Dr. Ratner’s conclusion, as well as supporting case law, we respectfully request that this Court find Mr. Jones incompetent to stand trial.

Applicant Details

First Name **Melanie**
Middle Initial **E**
Last Name **King**
Citizenship Status **U. S. Citizen**
Email Address melanieking@case.edu

Address

Address
Street
401 Woodshire Lane
City
Farmington
State/Territory
Missouri
Zip
63640
Country
United States

Contact Phone Number **5733666994**

Applicant Education

BA/BS From **Truman State University**
Date of BA/BS **May 2018**
JD/LLB From **Case Western Reserve University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=33603&yr=2013
Date of JD/LLB **May 16, 2021**
Class Rank **10%**
Law Review/Journal **Yes**
Journal(s) **Law Review**
Moot Court Experience **Yes**
Moot Court Name(s) **Dunmore Moot Court**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Ku, Raymond
rsk14@case.edu
216-368-3963
Entin, Jonathan
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216-368-3321

References

References

Magistrate Judge Stephanie K. Bowman, U.S. District Court for the
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Professor Emeritus Jonathan Entin, Case Western Reserve University
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Copyright Law

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Melanie King

573-366-6994 | melanieking@case.edu

August 27, 2020

The Honorable Elizabeth Hanes
United States District Court, Eastern District of Virginia
701 E Broad St., 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at Case Western Reserve University School of Law applying for a clerkship position in your chambers to begin in 2021. With experience in moot court advocacy, law review research, and writing for District and Magistrate Judges, I believe I would make an excellent addition to your chambers.

Working as an extern in the U.S. District Court for the Southern District of Ohio provided me an invaluable practical education. I worked in Magistrate Judge Stephanie Bowman's chambers all summer and aided the judge in writing mediator's proposals following settlement hearings as well as reports and recommendations. The final order I wrote on behalf of Judge Bowman was published without changes. I also observed trials in Judge Michael Barrett's chambers, and wrote a draft order for his career clerk. Twice last summer I was able to observe Sixth Circuit oral arguments in Cincinnati, representing a broad array of subject matter and advocacy styles.

I am excited to perform rigorous legal research and writing. As a research assistant to Professor Aaron Perzanowski, I examine substantive issues of law pertinent to free speech and property rights. As a law review editor, I confirm the accuracy of articles' logical conclusions and correct footnote formatting. Next year, I will serve as the Online Editor-in-Chief, meaning I will serve on the executive board, review and publish articles directly to the Law Review's website, and create blog and podcast commentary for ongoing legal issues.

I would value the opportunity to work in your chambers for many reasons. Not only would I love to work in a region as beautiful and historic as Richmond, but I also appreciate your history of public service as a public defender. Serving the public interest is very close to my heart; my capstone position this coming year will be in the Cleveland Federal Public Defender's office and my entire career history has been public health and government. I am also interested in many areas of civil law over which a magistrate judge presides; last year I received a CALI Excellence for the Future award in both Copyright Law and in Business Associations. I look forward to the opportunity to use these competencies as a term clerk and I hope to one day become a career clerk.

Please find attached a list of references. Please note that while Judge Bowman does not write letters of recommendation, she is happy to take phone calls. Her contact information is included.

Sincerely,

Melanie King

Melanie King

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References

Magistrate Judge Stephanie K. Bowman, *U.S. District Court for the Southern District of Ohio*
Judicial Externship

- (513) 564-7680
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Melanie King

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melanieking@case.edu

EDUCATION

Case Western Reserve University, Cleveland OH

Juris Doctor, Candidate, May 2021

- As of June 2020: Grade Point Average is 3.746 | Class Rank is 11/163
- Law Review: Online Editor-in-Chief, Volume 71
- CALI Excellence for the Future Award, Copyright Law, Fall 2019
- CALI Excellence for the Future Award, Business Associations, Fall 2019
- Dean Dunmore Award: Highest combined oral and brief score in the Dean Dunmore Moot Court Competition
- Dunmore Moot Court Board: Dunmore Coordinator, 2021
- Research Assistant: Aaron Perzanowski, Intellectual Property
- Gerber Law-Medicine Fellow: Partial scholarship and legal research experience

Truman State University, Kirksville, MO

Bachelor of Science, Health Science, *magna cum laude*, May 2018

- Concentration: Community, Worksite, and Public Health
- H20: Helping Hydrate Others, President & Founder 2016-2018

Certified Health Education Specialist

National Commission for Health Education Credentialing, Inc. (NCHEC)

EXPERIENCE

U.S. Department of Health & Human Services, Chicago, IL Summer 2020

Legal Intern, Office of General Counsel (Conducted Remotely)

- Wrote motions on behalf of the agency for administrative and federal courts, conducted legal research on how emergency health law policies would affect future agency litigation, informed medicare and medicaid attorneys on relevant guidance and policy changes as they arose in weekly briefings

Federal Judicial Externship, Cincinnati, OH Summer 2019

U.S. District Court, Southern District of Ohio: Magistrate Judge Stephanie K. Bowman

- Wrote draft orders for district and magistrate judge, observed multiple district court judges and staff conduct criminal and civil proceedings in court and in chambers, and engaged in Federal Bar Association mock trial program with fellow externs and summer associates before state judges

The SERVE Center, Truman State University Aug 2016 - May 2018

Managing Intern: Service Office, Department of Student Affairs

- Managed an office of 15 workers, created staff schedules, led staff meetings, and engaged community partners to sponsor fundraising events, coordinated large scale events including over 1200 students and 250 worksites

St. Francois County Health Center, Park Hills, MO Summer 2017

Health Education Intern

- Created and implemented community health initiatives, including nutritional health education for elementary students, smoking cessation programs, and workplace emergency action plans

Baker for Missouri, Columbia, MO Summer 2016

Assistant Financial Director, Primary Campaign

- Aided in raising \$80,000 for statewide campaign, coordinated planning for campaign events and fundraising opportunities, assisted candidate with daily schedule including phone calls and travel

Melanie King
Case Western Reserve University School of Law
Cumulative GPA: 3.746

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts	Maxwell Mehlman	A-	4.00	
LLEAP 1	David Carney	B+	3.00	
Criminal Law	Kevin McMunigal	B+	3.00	
Contracts	Juliet Kostritsky	A	4.00	

Dean's Honor List

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Property	Aaron Perzanowski	A	4.00	
Civil Procedure	Cassandra Robertson	A-	4.00	
International Law Fundamentals	Michael Scharf	CR	1.00	First-year electives, all taken pass/fail
Legislation & Regulation	Peter Gerhart	B+	3.00	
Courts, Policy & Social Change	Jonathan Entin	CR	1.00	First-year electives, all taken pass/fail
LLEAP 2	David Carney	B+	3.00	

Dean's Honor List

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Copyright Law	Raymond Ku	A	3.00	CALI Excellence for the Future Award
Constitutional Law	Jonathan Adler	A	4.00	
Federal Judicial Externship		CR	4.00	
Appellate Practice	Timothy Duff	A	2.00	
Business Associations	Anat Alon-Beck	A	4.00	CALI Excellence for the Future Award
Law Review Seminar	Jonathan Entin	A-	2.00	

Dean's Honor List

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law Review Seminar	Jonathan Entin	A-	2.00	
LLEAP 3	Matthew Salerno	P	3.00	
Criminal Procedure I	Michael Benza	P		
Appellate Practice	Timothy Duff	A	2.00	
Professional Responsibility	Cassandra Robertson	P	3.00	

Melanie King
Truman State University
Cumulative GPA: 3.78

Fall 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Writing as Critical Thinking		A	3.0	Dual-credit course taken during high school.
General Psychology	Kellogg	A	3.0	Dual-credit course taken during high school.
US History I	Brian Reeves	A	3.0	Dual-credit course taken during high school.

Spring 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
US History II	Brian Reeves	A	3.0	Dual-credit course taken during high school.
ENG Elective	Franklin	A	3.0	Dual-credit course taken during high school.
Introduction to Philosophy	Brian Reeves	A	3.0	Dual-credit course taken during high school.

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
HLTH Elective		A	3.0	Dual-credit course taken during high school.
Analytic Geom & Calc I		B	3.0	Dual-credit course taken during high school.
HIST Western Civ	Brian Reeves	A	3.0	Dual-credit course taken during high school.
Exploring Religions	Brian Reeves	A	3.0	Dual-credit course taken during high school.

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Public Speaking	Kevin Marler	A	3.0	Dual-credit course taken during high school.
College Algebra		A	3.0	Dual-credit course taken during high school.
ENG Elective	Diana Mays-Nielsen	A	3.0	Dual-credit course taken during high school.
HIST Elective	Brian Reeves	A	3.0	Dual-credit course taken during high school.

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Truman Week	P	1.0
Chemical Principles I	A	4.0
Intro Biology I w Lab	A	4.0
Greek Lit in Translation	A	3.0
Freshman Biology Seminar	A	1.0

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Chemical Principles II		A	4.0	
Intro to Community & Public Health		A	3.0	
Intro Biology II w Lab		B	4.0	
Elementary Spanish II		A	3.0	

Summer 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American Institutional History		B	1.0	
Writing Enhanced Race & Ethnicity		A	3.0	

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Basic Statistics		B	3.0	
The Presidency	Candy Young	A	3.0	
Recreational Team Sports		A	1.0	
Personal Health and Fitness		B	2.0	
Rhetoric and Civic Life	John Self	A	3.0	
Principles of Health Education and Health Science		A		

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Writing Enhanced Public Policy Making	Candy Young	A	3.0	
Communication Practicum	John Self	P	1.0	
Experimental Psychology	Mark Hatala	A	3.0	
Mass Communication		A	3.0	
Nutrition in Health & Wellness	Nancy Daley-Moore	A	3.0	
Research Methods in Health Science	Alicia Wodika	A	3.0	

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Exercise Physiology	Brian Snyder	A	3.0	
Communication and Democracy		B	3.0	
Political Communication	John Self	B	3.0	
Comm Practicum	John Self	P	1.0	
Environmental Health		A	3.0	
Health Promotion Management and Marketing	Carol Cox	B	3.0	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
State & Local Government	Paul Parker	A	3.0	
Argumentation		A	3.0	
Writing Enhanced Program Assessment and Planning		A	3.0	
Human Physiology with Lab		C	4.0	

Summer 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Internship in Health Education		A	6.0	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Writing Enhanced Health Comm Methods	Nancy Daley-Moore	A	3.0	
Politics and Film	Paul Parker	A	3.0	
Global Public Health	Alicia Wodika	A	3.0	
Studies in Shakespeare		Y	4.0	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Epidemiology	Nancy Daley-Moore	B	3.0	
Program Implementation and Evaluation		A	3.0	
School Health Programs	Carol Cox	A	3.0	
Contemp Issues Women's Health	Nancy Daley-Moore	A	3.0	
Worksite Health	Carol Cox	A	3.0	

Grading System Description

Whole grades only; plus and minus not possible.



CASE WESTERN RESERVE
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RE: Application of Melanie King

Dear Judge:

It is with great pleasure and enthusiasm that I write this letter of recommendation in behalf of Ms. King. Melanie was a student of mine in Copyright Law, and distinguished herself as one of the best and brightest in the class. It was no surprise, therefore, when she achieved the highest grade in the class. Let me be clear, for over twenty years, I have taught at law schools spanning the entire range of AALS and US News rankings, including Cornell Law School, and when I describe her as one of the best and brightest, I mean that she is one of the best and brightest of all of the law students I have been fortunate enough to teach.

Ms. King's excellent CV speaks for itself so let me add some firsthand observations that are much harder to come by in the hiring process. First, her work ethic is excellent. I require my students to read much more than the average faculty member because heavily edited cases do not prepare students for the legal analysis required at the elite levels of our professor nor do they provide the necessary context of the judicial opinion in any given case let alone decisions that span generations. In both courses, she was consistently prepared and engaged, and on top of the reading.

Second, she has a top rate mind. It is one thing to keep up with the reading, it is quite another to recognize the nuances, fine points, and inconsistencies in judicial opinions. Through her class participation, both voluntary and involuntary, and questions, it was quite clear that she understood the material. As such, I was always confident that her participation would lead the class in a good direction.

Lastly, she is earnest and conscientious. I have witnessed the focus and effort she puts into her work and studies.